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# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1890.**

No. 141.

JAMES M. COBURN AND WILLIAM N. EWING, APPELLANTS,

*vs.*

THE CEDAR VALLEY LAND AND CATTLE COMPANY (LIMITED).

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

**FILED OCTOBER 4, 1887.**

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a UNITED STATES OF AMERICA, *sct:*

To the Cedar Valley Land and Cattle Company, Limited, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., on the second Monday of October next, pursuant to an appeal from the decision of the circuit court of the United States for the western division of the western district of Missouri, in a cause wherein J. M. Coburn and W. N. Ewing are appellants and you are respondent, to show cause, if any there be, why the judgment rendered against the said appellants in said appeal should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Arnold Krekel, district judge of the United States for the western division of the western district of Missouri, this 2nd day of December, in the year of our Lord one thousand eight hundred and eighty-six.

A. KREKEL, *Judge.*

Service of the above accepted.

GEO. W. McCRARY,
*Solicitor for Appellee.*

[Endorsed:] 1070. Citation.

1 UNITED STATES OF AMERICA, *sct:*

Pleas and proceedings had before the circuit court of the United States for the western division of the western district of Missouri, in a cause wherein The Cedar Valley Land and Cattle Company, Limited, *et al.* are complainants and J. M. Coburn *et al.* are defendants.

In Chancery.

Be it remembered that heretofore, to wit, on the 23rd day of November, A. D. 1885, in vacation of said court, the following proceedings were entered upon the order book of said court, to wit:

CEDAR VALLEY LAND & CATTLE CO. *et al.*
*against*
J. M. COBURN *et al.*

This day come complainants, by their solicitors, Geo. W. McCrary and Adams and Field, and by leave of court, heretofore obtained, file their cross-bill of complaint against defendants; thereupon it is ordered that a writ of subpœna issue, returnable in due course.

Said cross-bill of complaint is in words and figures as follows, to wit:

To the judges of the circuit court of the United States for the western division of the western district of Missouri:

Your orator, The Cedar Valley Land and Cattle Company,

Limited, of London, and an alien and a subject of the United Kingdom of Great Britain and Ireland, brings this its cross bill
2 against James M. Coburn and William N. Ewing, partners doing business under the firm name of Coburn and Ewing, and William N. Ewing, who are citizens of the State of Missouri.

And thereupon your orator complains and says:

That it is now and ever since the 7th day of January, 1884, has been a private business corporation duly incorporated under and by virtue of the laws of the said United Kingdom, and under its charter your orator has power to carry on the business of buying and selling land and cattle.

Your orator further states that heretofore, to wit, about December 31st, 1883, Duncan Stewart, George Burnett, Lord George G. Campbell, James Graham, Thomas Kingscote, and George D. Fisher, then styling themselves your orator's directors and acting in its behalf as your orator's promoters and in contemplation of your orator's corporate existence, employed the respondents, William N. Ewing and James M. Coburn, partners as aforesaid, as the agents of your orator, to purchase at the lowest price certain lands, cattle, and horses and all ranch property and equipments then belonging to one William B. Munson, situated in the counties of Randall and Deaf Smith, in the State of Texas, which purchase was to be made for the use of the company when formed; and the said promoters of your orator, acting for and on behalf of the company then in contemplation and about to be formed, to wit, your orator, the Cedar Valley Land and Cattle Company, Limited, did, on or about the 22nd day of December, 1884, by cablegram from London to said respondents, Coburn and Ewing, instruct them to purchase said property at the lowest possible terms, not exceeding the sum which had been mentioned in a previous letter from said respondents, dated October 22nd, 1884; and your orator avers that the said respondents, J. M. Coburn and W. N. Ewing, partners as aforesaid, accepted said employment and
3 agency and thereby undertook and agreed to act as your orator's servants and agents to buy the property at the lowest possible price and faithfully to represent the interests of said promoters and of said company when formed, and were thereby bound in good conscience and in equity to be faithful in their trust and to have no secret interest adverse to the interest of said promoters and of said company, your orator, when formed.

Your orator further states that the said respondents, acting in pursuance of their employment as aforesaid, did purchase said ranch and property for your orator from said Munson and did enter into the following agreement setting forth the terms of said purchase, to wit:

This instrument witnesseth a contract between W. B. Munson, of Grayson, Texas, and W. N. Ewing, of Kansas City, Missouri, by the terms of which it is agreed,

I.

That the said W. B. Munson has this day bargained and sold unto the said W. N. Ewing, for the consideration hereinafter stated:

1st. About seventy-five thousand (75,000) acres of land in Randall and Deaf Smith counties, in the State of Texas, being all the lands now claimed or owned solely by the said Munson in said counties connected with or appertaining to the said Munson's Paladuro ranch, in said Randall and Deaf Smith counties, to be more particularly described by a schedule to be annexed hereto, marked "A."

2nd. All the cattle owned by said W. B. Munson on the ranch aforesaid and in the Dixon Creek pastures (in Carson and Hutchinson counties), the same to include all the cattle now owned and claimed by said Munson not branded or in the following brands, viz., Crescent G., T. Anchor, G. M. S., F. O., with bar and without, and all now on the ranch and pasture aforesaid, or that may, before August 1st, 1885, be on said ranch and belonging to said Munson.

4 3rd. All the horses and mules owned by the said W. B. Munson on the said Paladuro and Dixon Creek ranches.

4th. All range and ranch rights now owned and enjoyed by said W. B. Munson in connection with said Paladuro ranch, all the lease of lands held by said Munson connected with or appertaining to the said ranch, all wagons, harness, branding irons, blacksmith and carpenter tools, furniture and property of every description owned and used by said Munson in connection with said ranch. An inventory not to be exclusive of items omitted but properly embraced in the above description will be appended hereto as Exhibit "B."

II.

1st. That said W. B. Munson shall, on or before May 1st, 1885, present to said Ewing's attorneys, in Kansas City, Missouri, duly certified or original evidences of the titles to the lands hereinbefore mentioned, and shall make to the said W. N. Ewing good and sufficient deeds, with covenants of good right to convey in fee, of warranty title and freedom from all and all manner of incumbrances (save taxes for the year of 1885), to be subject to the provisions of this contract, to such of said lands as the attorneys aforesaid shall determine the said W. B. Munson owns in fee by title clear and unincumbered, and to make similar deeds to such of said lands as said Munson, within sixty days after said May 1st, 1885, shall, in the opinion aforesaid, upon evidences of title furnished by said Munson as aforesaid, have perfected his title to.

2nd. That said Munson shall, from May 1st, 1885, to August 1st, 1885, at his own proper expense and charges, gather and deliver to said Ewing, at said Paladuro ranch aforesaid, — in pens and chutes prepared by said Munson at his own cost and expense; that the said Munson shall make all proper preparations for the counting

5 and actual delivery of said cattle, and until so actually delivered all expense of gathering, penning, keeping, and feeding said cattle shall be borne by said Munson, except as hereinafter provided; that said delivery may commence at any date after May 1st, 1885, and may continue from time to time until August 1st, 1885, as said cattle are gathered. It is understood, however, between said parties that this sale includes all the cattle at the places and in the

brands described in paragraph I hereof, whether gathered, counted, and actually delivered or not.

3rd. The horses and mules aforesaid shall be delivered by said Munson between said May 1st, 1885, and August 1st, 1885, at the said Paladuro ranch, at such times and in such numbers as the said Munson may desire, except twenty-five (25) head of horses and two spans of mules, to be an average of all in use on said ranch, which the said Munson shall deliver, when and as demanded by said Ewing, on the ranch aforesaid.

4th. The said Munson shall deliver to the said Ewing possession of all other property hereby sold not embraced in the three preceding subdivisions of this paragraph on or before Aug. 1st, 1885.

5th. On the day of the execution of this contract the said Munson shall make and deliver to the said W. N. Ewing a bond, with sureties to be approved by the said Ewing, in the sum of two hundred thousand (200,000) dollars, conditioned for the faithful and prompt performance upon his part of all the stipulations of this contract and for the payment of all such damages as may be sustained by said W. N. Ewing, his heirs or assigns, for or on account of any delay or failure of performance of this contract in all its details by the said Munson.

III.

That the said W. N. Ewing, in consideration of the foregoing, has agreed:

1st. At the execution of this instrument to pay the said Munson the sum of one hundred thousand dollars in cash.

6 2nd. At the execution of the deeds provided for in the 1st subdivision of paragraph II hereof to pay to the said Munson the sum of two dollars per acre, in cash, for the lands described and conveyed by such instruments.

3rd. After the delivery of thirty-five hundred head of cattle, bulls excepted, and thereafter as that number are delivered until two hundred thousand dollars' worth at the rate of eighteen (18) and $\frac{50}{100}$ dollars per head, to pay in installments for said deliveries up to said sum the sum of nine (9) and $\frac{25}{100}$ dollars per head; and after the delivery of said two hundred thousand (200,000) dollars' worth, then, as deliveries are made and aggregate thirty-five hundred head, to pay the sum of eighteen (18) and $\frac{50}{100}$ dollars per head; and to pay for said bulls (over one year old), as delivered, at the rate of eighteen (18) and $\frac{50}{100}$ dollars per head from the beginning, and for each of three of every four bulls delivered the additional sum of forty-one and $\frac{50}{100}$ dollars, seventy-five per cent. of said bulls being delivered at the rate or price of sixty dollars per head.

4th. To pay to said Munson, as delivered, the sum of fifty dollars per head for all the horses and mules delivered pursuant to subdivision (3) three of paragraph II hereof.

5th. To pay to said W. B. Munson, on August 1st, 1885, five per centum upon the sum of the value of all cattle delivered by him up to that date, estimating the same at the rate — eighteen and $\frac{50}{100}$ dollars per head, as the consideration in full of cattle sold hereby and

not gathered and delivered, and in addition five per centum upon seventy-five per cent. of the bulls delivered, at the rate of forty-one (41) and $\frac{50}{100}$ dollars.

IV.

1st. That the said W. B. Munson, in gathering and keeping
7 the cattle hereinbefore provided to be delivered, shall, by himself and his employees, use care and diligence to prevent any injury to or abuse of said cattle; that the cattle delivered and received by said Ewing shall be free from injury caused by improper handling in gathering and keeping the same; and the horses and mules to be delivered under this contract shall be in good condition and free from injury or damage on account of hard use or rough handling between this date and the date of delivery. Injury or damage caused by reasonable use in rounding up cattle shall not be included in this provision. "Good condition," as understood above, means such condition as may result from reasonable care and use in view of the work to be done under this contract.

2nd. That the said Ewing shall not, until Aug. 1st, 1885, use any branding iron or brand any cattle or horses — the ranch purchased hereby, except those horses and cattle actually delivered to him, and as to them only at the delivery; nor shall said Ewing, until the date aforesaid, have any right to work with or among said cattle, except those delivered at said delivery pens, and only at said pens.

V.

That all payments herein provided for to be made by said Ewing to said Munson may be made at the Traders' Bank, Kansas City, Missouri, or in the city of New York, as the said Munson may elect.

VI.

That the said W. N. Ewing, at his election, may make the last payment, aggregating the sum of one hundred thousand dollars, or any less sum as he may determine, for and upon the cattle herein contracted to be delivered, twelve months after Jan. 1st, 1885, provided such sum, the payment whereof shall be thus deferred,
8 shall bear interest from said Jan. 1st, 1885, at the rate of six (6) per cent. per annum, and shall be evidenced by the note of said W. N. Ewing and secured by a lien on all the property herein sold by said Munson to said Ewing.

VII.

That if the said W. N. Ewing shall fail to perform his obligations under this contract on or before Aug. 1st, 1885, then the sums that may have been paid by him hereunder shall not be forfeited; but at any time after Aug. 1st, 1885, R. Y. Rue, of Sherman, Texas; or if he should fail to act for any cause, then Charles Goodnight, of Armstrong county, Texas; or if he should fail from any cause to act, then the then acting sheriff of Dallas county, Texas, or any of his deputies, at or upon the request of either party thereto, shall be au-

thorized, after three months' advertisement in three daily papers in the State of Texas—one at Dallas, one at Galveston, and one at San Antonio—to sell all the property herein conveyed and described as an entirety to the highest bidder, for cash, at the court-house door, in the city of Dallas, Texas, and make conveyance and bills of sale thereof valid in law and binding the parties hereto and their assigns and receive and receipt for the purchase-money, and apply the same, first, to the payment of all expenses of sale, including advertisements, auctioneer's fees, a reasonable sum to said Roe, Goodnight, or sheriff, as the case may be, not to exceed one thousand dollars; second, to the payment of the sums that may remain due the said Munson, and, lastly, the remainder shall be paid to the said Ewing.

In determining the amount due Munson under this contract, if this provision is to be executed, the count of cattle and horses and mules which said Munson may have made before said August 1st, 1885, stated by him in writing and signed, shall be consid-
9 ered and estimated as the number of said cattle, horses, and mules sold under this contract by the said Munson to the said Ewing, and the prices as fixed in this contract shall be used in making the estimate, and if the lands have not been conveyed and paid for as hereinbefore provided the amount due by said Ewing for land shall be two (2) dollars per acre for all lands embraced therein, the titles to which may be, in the written opinion of some competent attorney, *be* considered good and perfect in the said W. B. Munson, and from the whole sum *this* found to be due for land, cattle, horses, and mules there shall be deducted all payments made by said Ewing under this contract, and the remainder, with interest at the rate of six (6) per cent. per annum from June 1st, 1885, shall be the sum due said Munson. The said Munson shall have the right in common with all others to bid for said property, and, if his bid is the highest bid, to become the purchaser, and the amount received by said Munson from said sale shall be in full satisfaction of all demands on said Ewing growing out of this contract in any form whatsoever.

VIII.

That the said W. B. Munson warrants unto the said W. N. Ewing and his assigns that there are now no squatters, nesters, or other trespassers upon the lands held by said Munson under lease transferred herein to said Ewing; that ranch and range, the privileges whereof have been this day sold by said Munson to said Ewing, are free from all other located brands and stocks of cattle than those sold hereby to said Ewing, and that all the property hereby sold said Ewing shall at the delivery thereof hereinbefore provided be free from all encumbrances, and the right and title thereto
10 passing by this instrument shall be entire, perfect, and absolute and free from all claims and liens whatsoever, whether created by statute, common law, equity, or contract or by any or all of them combined, and that there are no cattle in the brands described herein in the Pan Handle of Texas except such as are hereby conveyed, and the title to all in said brands in said territory is warranted.

IX.

That said Munson is to pay all taxes and rents accruing upon all the property embraced in this contract up to Jan. 1st, 1885, and all taxes and rents thereafter are to be paid by said W. N. Ewing; that said Ewing shall fulfill the obligations of said Munson under a contract for the construction and removal of about 47 miles of fence on the said Paladuro ranch, now in process of erection, and hold the said Munson harmless from any liability on account of said contract, provided the said Ewing shall not — required to pay on said contract more than the sum of nine thousand (9,000) dollars; that the said Munson is to furnish board and all expenses for all the men employed by himself in gathering and delivering said cattle and for all the men employed by said Ewing for receiving and holding the cattle when delivered, and the said Ewing is to pay for the board and expenses of the men employed by him at the rate of fifteen (15) dollars per month, and is to pay their wages and also the wages of five men to be under the direction of said Munson or his boss in keeping the delivered and undelivered cattle separated, it being understood that all the expenses of said ranch and men up to Aug. 1st, 1885, are to be paid and borne by said W. B. Munson except the wages and board above provided to be paid by said Ewing from May 1st, 1885.

X.

That in the event of any disagreement between the parties
11 hereto or their assigns respecting the rights, obligations, liabilities, or duties of either under this contract or growing out of any breach or supposed breach by either, such disagreement or controversy shall be settled by the arbitrament of two disinterested persons, one to be selected by each party, or if they fail to agree then by the award of one of such arbitrators concurred in by an umpire to be selected by the said arbitrators, said arbitrators to hear the statement of said parties, examining this contract, and hear such other evidence as they may deem relevant and proper at such sitting or sittings as they may appoint; and the said arbitrators may, at their discretion, agree upon the umpire in advance to sit with them in the hearing of said controversy, or they may appoint him after such hearing and after they have failed to agree, and in that event the said controversy can be determined by him and said arbitrators upon the said arbitrators' statements of the evidence and his agreement with one of said arbitrators in an award; and the award of said arbitrators, if they agree, or if they disagree then the award of one of said arbitrators and the umpire, reduced to writing and signed by them and delivered in duplicate to each of the parties, shall be considered and treated in all courts as the agreement of settlement between said parties of the all matters embraced in said award, and as such agreement and settlement shall be provable and enforceable in all courts having jurisdiction, and neither party shall have any cause of action in any court growing out of the breach of the other of any provision of this contract until in good faith he has made an honest effort to have the matter complained of arbi-

trated under the terms of this paragraph. This paragraph embraces liability, except upon the bond to be given by said
12 Munson, as hereinbefore provided, upon all other rights and liabilities incident to this contract.

XI.

1st. That if the lessor of the lands held by said Munson should not consent for the assignment of said lease, as provided for in subdivision 4 of paragraph I hereof, then the said lease shall be held by the said Munson as now, and for the use and benefit, however, of said Ewing or his assigns, and the said Ewing or his assigns shall pay the rent and charges on said lease required by the terms thereof to be paid by said Munson after January 1st, 1885.

2nd. That said Munson shall not deliver under this contract any cattle purchased from other parties after this date or put upon said ranch or pasture cattle to be delivered under this contract brought from other cattles belonging to him or obtained from other persons.

In evidence whereof the parties hereto have affixed their names to this and a triplicate original hereof this December the 31st 1884.

W. B. MUNSON.
W. N. EWING.

Witness:
WM. MEGINNS.

And your orator further represents that in pursuance of said contract the said cattle, ranch, and property were delivered to your orator, and it has been the owner thereof ever since. The contract of purchase was reduced to writing and signed by said Munson and also by the respondent, W. N. Ewing, who in negotiating the same was the active member of the said firm of Coburn & Ewing, and said contract on its face purported to be a sale of said prop-
13 erty by said Munson to said Ewing. Thereupon the said respondent Ewing made a written declaration of trust in behalf of your orator in words and figures as follows, to wit:

This instrument witnesseth: That the sum of one hundred thousand dollars provided to be paid by me to W. B. Munson in cash upon the execution of a contract between me and the said W. B. Munson this day drawn up, by which the said Munson contracts to sell to me certain lands & cattle, &c., therein described, belongs to and is the property of the Cedar Valley Land & Cattle Company, and this declaration of trust is made by me for the protection of said company in the event of my death or other accident to me before the intents of me and the said company shall be declared and made known by proper writings between us.

Witness my hand this Dec'r 31, 1884, hereunto set in presence of—

(Signed) W. N. EWING.

And your orator further represents that afterwards, on or about the 29th day of December, 1884, said respondents, Coburn & Ewing,

in the meantime having accepted and entered upon the duties of the agency aforesaid, did notify the promoters of respondent company by cablegram that they had closed the contract for the purchase of said ranch, setting forth in said cablegram the terms of the contract. Said cablegram was in words and figures as follows:

"Contract closed price for cattle eighteen dollars fifty cents except bulls everything actually counted commencing May concluding August first horses and mules fifty dollars seventy-five thousand acres at two dollars all other property thrown in payments one hundred thousand cash one hundred fifty thousand May first when land must be deeded balance as cattle are counted allowing five per centum for remnant no forfeiture no interest if desired one hundred thousand will be carried one year
14 six per centum all expenses building chutes and rounding cattle therein paid by him every point well guarded most favorable contract must have one hundred thousand in New York Monday Tuesday last day contract holds good answer here.

"COBURN."

And the said promoters of your orator, relying upon the good faith of said Coburn and Ewing and believing that said cablegram truthfully stated the price to be paid to said Munson for the property aforesaid, did approve said sale and, at the request of said Coburn and Ewing, did afterwards forward to them the money to make the required payments of the purchase price of said ranch, cattle, and property, as follows: On or about the 31st day of December, 1884, the said promoters, at the request of said Coburn and Ewing, sent them the sum of ninety-nine thousand seven hundred and ninety-one dollars and eighty cents, in trust, to be by them applied in payment of said purchase-money; and on or before the 5th day of May, 1885, after your orator had been fully organized as a corporation, your orator sent to said Coburn & Ewing the further sum of one hundred and thirty-nine thousand nine hundred and twelve dollars and fifty cents, to be applied by them as a further payment upon said purchase; and on or about the 18th day of June, 1885, your orator, in order to comply further with the contract for the purchase of said property, sent to the said Coburn & Ewing the further sum of one hundred and seventy-nine thousand nine hundred and thirty-five dollars; all of which sums of money were duly received by the said Coburn and Ewing in trust for the purposes aforesaid.

Your orator further represents that after the receipt by the said Coburn & Ewing of the first installment above mentioned they, the said Coburn & Ewing, falsely represented to your orator that they paid the whole of said sum to said Munson on account
15 of the purchase-money of said property, said false representation having been made by cablegram, dated 4th of January, 1885, as follows:

"Contract signed and money paid."

Whereas your orator avers that in truth and in fact the said respondents, Coburn & Ewing, did not in good faith pay over all of said first installment of money to Munson, but did, on the contrary,

in pursuance of a secret agreement and understanding between them and the said Munson, and which was by respondents studiously concealed from your orator, receive and appropriate to their own use out of said first installment a large sum of money, to wit, about the sum of ten thousand dollars, but whether this sum was taken out of the money sent by your orators to said respondents, with which to make said first payment, before said money was placed in the hands of said Munson, or whether the whole sum was handed to said Munson and the sum of about ten thousand dollars immediately returned to said respondents, Coburn & Ewing, your orator does not know and cannot certainly state; but they aver and charge that, whatever the form of the transaction, it was resorted to to cover up an illegal, fraudulent, and secret scheme whereby the said Coburn and Ewing were to pay to said Munson about ten thousand dollars less than the sum placed in their hands by your orator with which to make said first payment, which illegal and fraudulent purpose was fully accomplished.

And your orator charges that the respondents, Coburn & Ewing, had no right secretly to bargain with said Munson to receive from him, as a commission or otherwise, directly or indirectly, any part of the moneys sent to them by your orator as aforesaid and with which to pay for said property, and the said respondents had no right to have any interest adverse to the interest of your orator in connection with the said transaction.

16 And your orator avers and charges that at or before the time of consummating the purchase of said ranch and property for your orator the said respondents, Coburn & Ewing, secretly, fraudulently, and in violation of their trust, did agree with said Munson to take from the moneys to be paid by your orator for said property the sum of about forty thousand dollars, and in pursuance of the said fraudulent agreement the said respondents did appropriate, in the manner aforesaid, out of said first installment the said sum of about ten thousand dollars without the knowledge or consent of your orator or of its promoters aforesaid.

And your orator further avers that the said respondents, Coburn & Ewing, duly received the second and third installments of money above mentioned, transmitted to them by your orator as aforesaid for the purpose of making payments upon the purchase-money of the ranch and property aforesaid, all of which money was received by the said respondents in trust to be used as aforesaid; but your orator charges that the said respondents, Coburn & Ewing, did not pay over to the said Munson the whole amount of said installments, but, in pursuance of the fraudulent, secret, and unlawful agreement aforesaid, did retain out of each of said installments the sum of about fifteen thousand dollars, in all about the sum of thirty thousand dollars, and did appropriate the same to their own use without the knowledge or consent of your orator, and did suppress and keep secret from your orator their fraudulent acts and doings in the premises, contrary to good conscience and equity.

And your orator avers and charges the fact to be that out of the whole amount of money so as aforesaid transmitted by your orator

to the said respondents in trust, to be by them used in pay-
17 ment for said ranch and property as aforesaid, the said respondents, Coburn & Ewing, did, in pursuance of the aforesaid secret and fraudulent agreement and understanding, appropriated to their own use, in the manner aforesaid, the sum of about forty thousand dollars.

And your orator further represents that the said respondents, Coburn & Ewing, appropriated out of the money sent them as aforesaid by your orator to be paid to said Munson for said property another large sum, to wit, about the sum of sixty thousand dollars, and by an agreement with said Munson, unknown to your orator and kept secret from it, the said respondent did turn over to said Munson in lieu of said sum certain real estate in Kansas City, Missouri, being the south thirty (30) feet of the east ninety (90) feet of lot one hundred and seventy-nine (179), block eighteen (18), Old Town, Kansas City, Jackson county, Missouri, by which secret and fraudulent transaction the said respondents, Coburn & Ewing, made a profit to themselves of about the sum of fifteen thousand dollars, which they appropriated to their own use and kept secret from your orator.

And your orator further represents that the said respondents, Coburn & Ewing, after their employment as aforesaid as agents to purchase said ranch and property, did fraudulently agree with the said Munson to pay him at the rate of sixty dollars per head for a large number of bulls included in the herd of cattle purchased from said Munson, whereas the said Munson was then willing to accept for said bulls eighteen dollars and fifty cents per head, and the larger price was secretly and fraudulently agreed upon to induce the said Munson to consent to the payment of the aforesaid large sum of forty thousand dollars as commissions to the said Coburn & Ewing out of the moneys so sent to them by the complainant company with which to pay for said ranch and
18 herd, whereby the complainant company, your orator, was damaged in the sum of about eighteen thousand nine hundred and twenty-four dollars.

All of which fraudulent acts and doings on the part of the said respondents were unknown to your orator until the month of August last.

And your orator further represents that on or about the 2nd of March, 1885, the respondent, William N. Ewing, addressed to one of the directors of your orator a proposition in writing in words and figures substantially as follows:

MORLEY'S HOTEL, TRAFALGAR SQUARE,
LONDON, W. C., MONDAY, *March* 2, 1885.

MY DEAR SIR: Referring to our conversation this morning upon the subject of my subscription to the capital stock of the Cedar Valley Company and in regard to the remuneration to be paid me as manager of the company in America, I beg to say that I have given these matters the fullest and most serious consideration, and, looking to my own proposition, I regret that I can come to no other

conclusion than the following: I will subscribe for two thousand shares, but I can do so only upon the condition that I am to be appointed manager of the company for five years. Appreciating an economical administration for the first year, I am willing to leave to the honorable board to suggest a salary of not less than —, which in their judgment they can afford to pay in view of the work to be done and the earnings to be realized. The remaining four years I shall expect a salary of five thousand dollars per annum, in addition to which, of course, all traveling, office, and such like expenses would have to be paid by the company.

19 I am extremely sorry that the misconstruction of my letters should have led to that which is to me such an unpleasant incident.

I had not the slightest idea of increasing, under any circumstances, a liability beyond $80,000.00, and as the above offer will involve a subscription of $20,000.00 in excess of my original proposition, I hope that you will concur with me that this will be as much as I can fairly be expected to do under the circumstances.

I am, sir, most sincerely yours,

W. N. EWING.

To Lieut. Col. D. Stewart, Cedar — Land and Cattle Co., London.

And your orator says that the said proposition having been duly considered by the board of directors of your orator the same was rejected, and your orator refused to enter into any contract or agreement whereby stock should be issued to said Ewing or to said respondents, Coburn & Ewing, upon the condition that the said W. N. Ewing should be appointed manager of your orator for the period of five years or any other period.

And your orator further avers that afterwards, on the 4th day of March, 1885, said respondent, W. N. Ewing, for and on behalf of the respondents, Coburn & Ewing, made an application in writing to your orator, requesting it to allot to them, the said Coburn & Ewing, two thousand (2,000) shares of its stock, which application was unconditional, except that the allotment was to be made upon the terms of the company's prospectus. Said application was as follows:

"To the directors of the Cedar Valley Land and Cattle Company, Limited, Morgate street chambers, Morgate street, London, E. C.

20 GENTLEMEN: I request you to allot me two thousand shares upon the terms of the company's prospectus, and I hereby agree to accept the same or any smaller sum that may be allotted to me, and to pay ten thousand pounds on the first day of May, 1885, as the board desires, and I authorize you to register me as the holder of the said shares.

Names in full: WILLIAM NATHANIEL EWING AND JAMES M. COBURN.

Address: Kansas City, Missouri, U. S. A.
Description: Bankers and merchants.
Date: 4th of March, 1885.
Signature: Coburn & Ewing."

And your orator further says that upon the consideration of the said application the same was by your orator approved and accepted, and two thousand shares of your orator's stock was accordingly issued to the said respondents, Coburn & Ewing.

And your orator further avers that on the 4th day of March, 1885, upon consideration of the application of the respondent, W. N. Ewing, to be employed as manager of your orator, said application being considered as a matter separate and distinct from the application of the said Coburn & Ewing to be allotted the aforesaid shares of stock, your orator did agree to employ the said Ewing as its manager in America for five years from the first of January, 1885, at a salary for the first year of £600 (or $3,000), and salary for subsequent years to be such as might be agreed on by said Ewing and your orator's board of directors, and a memorandum of this agreement was signed by your orator's secretary and delivered to the said respondent, Ewing, in words and figures as follows:

21 "The Cedar Valley Land and Cattle Company, Limited,
Morgate street chambers, 30 A Morgate street.

LONDON, E. C., ——, 18—.

Memo. of agreement as to Mr. Ewing's employment as the company's manager in America for five years from the first of January, 1885, at a salary for the first year of £600, and the salary for subsequent years to be such as may be agreed on by Mr. Ewing and the board; six months' notice to be given by Mr. Ewing if he desires to terminate the engagement; office and traveling expenses not included in the salary; office expenses estimated by Mr. Ewing at $25 per month.

THOMAS C. WEBB, *Secretary.*

And your orator further represents that afterwards, on or about the 6th day of October, 1885, the said respondents, Coburn and Ewing, filed their bill in equity in the circuit court of Jackson county, Missouri, against your orator and one George Dixon Fisher, which bill in equity has been duly removed from the said circuit court of Jackson county, Missouri, into this court, where the same is now pending; and by the said bill they alleged that the subscription of Coburn & Ewing to your orator's capital stock was made upon the condition that said Ewing was to be employed as your orator's manager in America for five years, beginning January 1st, 1885, and that your orator had no lawful right to discharge the said Ewing from employment as manager and to terminate the aforementioned agreement before the expiration of said five years.

22 The said bill also averred that your orator had undertaken to terminate said employment, to cancel said agreement, and to remove the said Ewing from the position of manager of your orator in America, and that your orator had not returned or repaid to the said Coburn & Ewing the sum which they paid to it for the aforesaid two thousand shares of stock issued to them upon their application as aforesaid; and the said respondents, complainants in said bill, prayed that your orator might be enjoined and restrained

from discharging said Ewing or interfering with his management of your orator's property—

Whereas your orator avers the truth to be that the subscription of said Coburn and Ewing to your orator's capital stock was unconditional and was not in any manner connected with the employment of said Ewing as manager of your orator's property in America; and your orator says it is true that it did not return to the said respondents, Coburn & Ewing, the sum which they had paid for the two thousand shares of stock as aforesaid; and your orator avers that it is not and was not bound in equity to repay to the said Coburn & Ewing the sum paid by them for said stock or any other sum whatsoever as a condition precedent to its right to rescind the aforesaid contract whereby said Ewing was employed as manager, or as a condition precedent to its right to remove said Ewing from said position on account of the frauds, bad faith, and moral misconduct on his part hereinbefore set forth.

But your orator avers that it is abundantly solvent and able to respond in damages, and that it is willing to submit to this honorable court whether any accounting between it and the said respondents, Coburn & Ewing, is necessary to the end that complete equity may be done as between them, and will submit to any accounting which you honors may deem meet and proper.

23 And your orator states that a subpœna was duly issued from the said court upon the said bill so filed by Coburn & Ewing and served upon your orator, who has appeared in said cause and fully answered said bill.

And your orator further avers that the said respondent, W. N. Ewing, was, on or about the 7th day of September, 1885, duly removed from the position of manager as aforesaid, and his appointment was cancelled by your orator for the following good and sufficient reasons, to wit:

The said respondent obtained his employment as manager aforesaid by fraud, in this: that at the time he secured the same he suppressed and secreted the facts hereinbefore stated concerning his bad faith towards your orator in connection with the purchase of said ranch and property from said Munson, including the fact that he and his said partner, respondent Coburn, had appropriated about ten thousand dollars of the money sent to them by your orator with which to pay for said ranch, and that they had secretly contracted to appropriate about thirty thousand dollars more of said money; also the fact that they had paid more for the aforesaid bulls than the said Munson was willing to take, and the fact that they then intended to make a large profit to themselves secretly by turning over to said Munson the aforesaid real estate in lieu of about sixty thousand dollars of the money so transmitted by your orator; all of which facts he, the said Ewing, was in duty bound to divulge to your orator, and which, if divulged, would have prevented his employment in that or any other capacity by your orator; all of which facts, as well as the acts of concealment and fraud aforesaid, are hereinbefore fully set forth and stated.

And your orator says that when the respondent, W. N. Ewing,

applied for employment as manager as aforesaid he well
24 knew that your orator, if advised of his bad faith, breaches of trust, and fraud, would refuse to employ him as such manager; and your orator charges that in all these fraudulent transactions said respondent Ewing was the active member of the firm of Coburn & Ewing, having the chief charge and management of the negotiations and dealings with the said Munson on behalf of your orator, so that had your orator been advised of the said fraudulent transactions of said firm of Coburn & Ewing it would have at once refused to employ said Ewing as its manager or agent in any position of trust and confidence whatsoever.

Wherefore your orator says that the said contract, whereby the said respondent Ewing was employed as manager, was obtained by fraud and is wholly null and void and should not be enforced by a court of conscience and of equity, and the removal of said respondent Ewing from the position of manager, as aforesaid, was for a good and sufficient cause.

And your orator further says that not only did the said respondent Ewing obtain his employment as manager, as aforesaid, by fraud, as aforesaid, but your orator charges that after said appointment the said Ewing continued to act in bad faith toward your orator and in hostility to its interests, for your orator avers that after such appointment your orator sent to the said respondents, Coburn & Ewing, the two last installments of money hereinbefore mentioned, in trust, to be applied as hereinbefore set forth upon thecontract for the aforesaid property; and the said respondents, Coburn & Ewing, in pursuance of the secret agreement aforesaid, did retain and appropriate therefrom to their own use the sum of about thirty thousand dollars, as aforesaid, to the great damage and injury of your orator; and the said respondents, Coburn & Ewing, did
25 after their appointment retain and appropriate to their own use the sum of about sixty thousand dollars, as aforesaid, out of the moneys so sent to them by your orator, and did turn over to said Munson, in lieu of the said sum of about sixty thousand dollars, the real estate hereinbefore mentioned, whereby they made a profit to themselves of about fifteen thousand dollars, as hereinbefore stated, all of which was kept secret from your orator.

And your orator further represents that it is the owner of the ranch and cattle purchased from said Munson as aforesaid; that among said cattle are about two thousand beeves ready for market, and which, for the best interests of your orator, should be sent to market without delay; and your orator desires to send them to market in charge of an agent selected by it for that purpose, and was proceeding to do so, as was its right, when, on or about the 20th day of October, 1885, the respondent Ewing, claiming still to be the manager of your orator, but acting in hostility to its interests and contrary to its wishes, did undertake to interfere with and prevent your orator from carrying out its purpose, and to this end did order and direct persons in charge of said cattle not to send them to market, as your orator had directed, and did thereby cause said cattle to be stopped at a point on the way to market about one hun-

dred and fifty miles from said ranch, and, after detaining them there for some time, did order them back to the ranch, whereby the said respondent Ewing, under pretence of acting for your orator and as its agent and servant, has undertaken to defeat its plans and purposes in the control and management of its own property, to the great damage and injury of your orator, for that your orator says that said cattle were by the said hostile action of said Ewing stopped at a point on the plains where your orator was in danger of
26 losing them by reason of their straying away, and where they were exposed to damage by lack of food, care and attention, and by exposure to storms; and to what extent they may have been actually damaged your orator is not advised, but prays leave to amend his cross-bill when the facts are ascertained.

Wherefore your orator charges that the respondent Ewing not only obtained his employment as manager by concealment and fraud, but has also exercised his powers as such manager in hostility to the interests of your orator. By reason of all which fraud and moral misconduct your orator is absolved from all obligation to continue the said Ewing in its service as such manager, and is entitled to a decree cancelling and holding for naught the said agreement for the employment of said Ewing as manager.

And your orator well believed, when it remitted the aforesaid sums of money to the aforesaid Coburn & Ewing, that they would faithfully represent its interests, and that they had truthfully represented the facts concerning the purchase of the aforesaid ranch and property, and that they would see that all moneys of your orator intrusted to them should be faithfully and honestly applied in the interest of your orator. Immediately upon discovering the facts hereinbefore set forth constituting the fraud and bad faith aforesaid, your orator in writing demanded of said Coburn & Ewing that they should repay and deliver over to your orator all the moneys that they have wrongfully appropriated belonging to your orator, and account to it for all the profits that they have made in the manner aforesaid; and thereupon the said respondents, Coburn & Ewing, declined to refund any of said moneys or to pay over any of said profits to your orator, and your orator, having lost all confidence in said Ewing and believing him guilty of moral misconduct
27 toward your orator and knowing that he had acted contrary to your orator's interests, discharged him from your orator's employment as aforesaid, and demanded that he quit such employment and deliver up to your orator all books and papers then in his possession belonging to your orator, and said Ewing refused to comply with such demand or to recognize such discharge.

And your orator further says that the said respondent, Ewing, since his discharge as aforesaid, still pretends to be in the employment of your orator as such manager, and intermeddles continually with your orator's business affairs, claims to be in possession of your orator's property, and sets up and claims that said written employment still subsists, and threatens to make contracts as your orator's manager binding upon it, and is acting against your orator's interests and contrary to its wishes and against its express commands.

And your orator further says that the said respondents, Coburn & Ewing, have vexatiously instituted two suits, one being the suit hereinbefore mentioned and the other being a suit brought in the district court of Oldham county, Texas, for the purpose of enforcing the aforesaid contract for the employment of said Ewing as manager, and for the purpose of enjoining your orator from taking charge of and managing its own affairs and from disturbing said Ewing in his possession of your orator's property and business, and the said respondents threaten to bring other suits based upon the aforesaid fraudulent and void contract to vex and annoy your orator.

All of which acts, doing, and pretenses are contrary to equity and good conscience and tend to the manifest wrong and injury of your orator in the premises.

In consideration whereof, and forasmuch as your orator can only have adequate relief in the premises in this honorable
28 court, where matters of this nature are properly cognizable and relievable, your orator prays that the written employment of said Ewing be ordered to be delivered up and cancelled, and that the said Ewing be decreed to immediately turn over to your orator all its books, papers, and records now in his possession and all of its property of every kind and character now in his control.

And may it please your honors to grant unto your orator the writ of injunction, issuing out of and under the seal of this honorable court, or issued by one of your honors, according to the form of the statute in such cases made and provided, directed to the respondent, William N. Ewing, commanding, enjoining, and restraining the said Ewing, his agents, partners, attorneys, and servants, from acting as your orator's manager, and from interfering with the cattle or any property of your orator, or making any contracts on behalf of your orator, or bringing any suits based upon or for the enforcement of the aforesaid contract, or from in any manner incurring liability as manager of your orator, and from selling or agreeing to sell any of your orator's cattle or property whatsoever or exercising any control whatever over the same or any part thereof; and that your orators may have such further or other relief in the premises as the nature of the circumstances of this case may require and which to this honorable court may seem meet.

And may it please your honors to grant to your orator the writ of subpœna, to be directed to said respondents, James M. Coburn and William N. Ewing, summoning the said respondents, by a certain day and under a certain penalty therein to be inserted, to be and appear before your honors, then and there to answer the premises and abide the order and decree of the court; but the said respondents are not required to answer under oath, an answer under oath being hereby expressly waived.

29 GEO. W. McCRARY,
ADAMS & FIELD,
*Solicitors for Complainants.*

GEO. W. McCRARY, *Of Counsel.*

George Dixon Fisher, being duly sworn, upon oath says that he is one of the directors of the complainant in the foregoing cross-bill, The Cedar Valley Land & Cattle Company, Limited, and its duly authorized agent and attorney-in-fact; that he has read said cross-bill and knows the allegations therein, and that all the allegations in said cross-bill are true.

GEORGE DIXON FISHER.

Subscribed and sworn to before me this 25th day of Nov., 1885.
[SEAL.] H. C. GEISBERG, *Clerk.*

And thereupon a subpœna in chancery was issued against said defendants and delivered to the marshal, and the same was afterward, to wit, on the 9th day of December, A. D. 1885, returned into the clerk's office duly served. Said subpœna in chancery and return thereon are in words and figures as follows, to wit:

UNITED STATES OF AMERICA, } *sct:*
*Western Division of the Western District of Missouri,* }

The President of the United States of America to James M. Coburn and William N. Ewing, Greeting:

You are hereby commanded to be and appear at rules, to be held at the office of the clerk of the circuit court of the United States for the western division of the western district of Missouri, on the first Monday of January next, at the city of Kansas, then and there to answer the bill of complaint of Cedar Valley Land and Cattle Company, Limited, a corporation of the United Kingdom of Great Britain and Ireland, filed against you on the 23rd day of November, A. D. 1885. Hereof fail not.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 2nd day of December, 1885.

Issued at office, in the city of Kansas, under the seal of said court, the day and year last aforesaid.
[SEAL.]

H. C. GEISBERG,
*Clerk of said Court,*
By JOHN M. PARRY, *D. C.*

MEM.—The defendants to enter their appearance in this suit in the clerk's office on or before the day at which the writ is returnable; otherwise the bill may be taken *pro confesso.*

H. C. GEISBERG, *Clerk,*
By J. M. PARRY, *D. C.*

UNITED STATES OF AMERICA, } *sct:*
*Western Division of the Western District of Missouri,* }

I do hereby certify that I executed this writ by delivering a true and correct copy of the same, together with a certified copy of the bill of particulars filed in this cause, to the within-named James M. Coburn, in Kansas City, Mo., Dec. 5th, 1885, he being the first served; and by delivering a true and correct copy of this writ to the within-named

Wm. N. Ewing, in Kansas City, Dec. 9th, 1885; all done in the western division of the western district of Mo.

ELIJAH GATES,
*U. S. Marshal, Western District of Missouri,*
By C. C. COLT, *Deputy.*

31 Marshal's fees:

| | |
|---|---|
| 2 services at $2.00 | $4 00 |
| Total | $4 00 |

And on the 7th day of December, A. D. 1885, the following stipulation was filed, to wit:

In the Circuit Court of the United States for the Western Division of the Western District of the State of Missouri.

COBURN & EWING
*vs.*
CEDAR VALLEY LAND & CATTLE CO., Limited, & GEORGE D. FISHER.

It is hereby agreed by and between the parties in the above cause that an application for a preliminary injunction by Coburn & Ewing in their petition in the above cause, and the application for a preliminary injunction by the Cedar Valley Land & Cattle Company, Limited, and Geo. D. Fisher, in their cross-bill filed in above cause, numbered 1070, both be taken up and considered together on Wednesday afternoon, 2 p. m., Dec. 9th, 1885.

This stipulation shall be deemed and taken as applying to cause or causes numbered 1069, 1070. This Dec. 7th, 1885.

WATERS, *For C. & E.*
ADAMS & FIELD,
*For Cattle Co. & Fisher.*

Afterward, to wit, on the 16th day of December, A. D. 1885, the following entry appears of record in this cause, to wit:

CEDAR VALLEY LAND & CATTLE CO.
*against*
J. M. COBURN *et al.*

This day come defendants, by their solicitors, and file
32 answer herein.

Said answer is in words and figures as follows, to wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

J. M. COBURN and W. N. EWING, Partners under the Firm Name of Coburn & Ewing, and W. N. EWING, Plaintiffs,
*versus*
THE CEDAR VALLEY LAND AND CATTLE COMPANY, Limited, and GEORGE D. FISHER, Defendants.

The answer of J. M. Coburn and W. N. Ewing, partners under the firm name of Coburn & Ewing, and W. N. Ewing, plaintiffs, to the cross-bill of complaint of the defendants herein.

These plaintiffs now and at all times hereafter saving to themselves all manner of benefit and advantage that can or may be had or taken to the many errors, insufficiencies, and imperfections in the said cross-bill contained, for answer thereto or to so much thereof as these plaintiffs are advised is material or necessary for them to make answer unto, severally answering, say—

That these plaintiffs admit that the defendant, Cedar Valley Land and Cattle Company, was first created and became a corporation under the laws of Great Britain on January 7th, 1885, and these plaintiffs further state and charge to be true that its charter, memorandum of association, and its articles of association, as the same were subscribed and executed by the promoters and incorporators and as the same have been in force at all times since, are as is shown by true copies thereof hereto attached, marked Exhibit "A," and prayed to be made a part of this answer.

33

These plaintiffs, further answering said cross-bill, admit that George Burnett was an incorporator and original promoter of the Cedar Valley Land and Cattle Company, Limited, and upon its creation and organization became and was a director and stockholder therein and continued as such until his death, which occurred about the month of March, 1885; but they are not advised nor do they know, save as they are informed by defendant, of the exact relation existing between Duncan Stewart, Lord George G. Campbell, James Graham, Thomas Kingscote, and George D. Fisher, and The Cedar Valley Land and Cattle Company, Limited, defendant herein.

These plaintiffs, further answering, say that they deny that the said Stewart, Burnett, Campbell, Graham, Kingscote, and Fisher, styling themselves directors of said company and acting in its behalf, employed these plaintiffs to purchase the cattle ranch *of* stated in said cross-bill; but, on the contrary, aver and charge to be true that for a long time prior to December, 1883, these plaintiffs were, as partners and under the firm name of Coburn & Ewing, engaged in the business and occupation of selling real estate, cattle ranches, and properties for a profit and on a commission and for a livelihood; that prior to the dates alleged in said cross-bills these plaintiffs had in their hands for sale, by an agreement with the owner, the cattle ranch of W. E. Munson, situate in Texas, and being the same ranch stated in the cross-bill, and for and

upon the terms that a commission for such sale should be paid to these plaintiffs by the said Munson upon a sale being made, to whoever might buy, and that said property was so
34 in their hands for sale until the sale mentioned in said cross-bill was made; that the said George Burnett, then being and residing in England and well knowing every one of the foregoing facts, and especially well knowing the character of the business then being transacted by the said firm of Coburn & Ewing, and that said firm then had for sale said ranch upon the terms and conditions aforesaid, proposed some time about the month of May, 1884, to these plaintiffs that if they would give him a share of their commissions to be received from said Munson that he, the said George Burnett, would find a purchaser for said ranch; that these plaintiffs are not advised as to what was said or done between the said Burnett and the said Stewart, Campbell, Graham, Kingscote, and Fisher nor his relation or association to them; that said Burnett informed these plaintiffs that a purchaser had been obtained; and acting under his express directions, orders, and knowledge, the plaintiffs executed all the contracts and instruments of writing in relation to said sale and performed every act in relation thereto; that these plaintiffs never at any time have had any business relation, association, or privity with the said Stewart, Campbell, Graham, Kingscote, and Fisher or any of them nor have they been promoters or incorporators of the Cedar Valley Land and Cattle Company, Limited, nor in any other capacity connected therewith until they became stockholders under the terms and conditions hereinafter set out; that neither said promoters and incorporators, Stewart, Campbell, Graham, Kingscote, and Fisher, or any of them or said company ever intended or expected to remunerate these plaintiffs by paying them for their services in buying said ranch, and although the said sale has long since been completed and ended, none of said
35 promoters or said company have ever suggested anything to these plaintiffs about paying them for their reasonable services or commissions or offered to pay them any sum whatever therefor; and these plaintiffs aver and charge the fact to be that their entire dealings were had with the said George Burnett and with none other; that he was well aware of all the facts hereinbefore recited; that if said Burnett had any association with said Stewart, Campbell, Graham, Kingscote, and Fisher they directed and authorized him to act for them; that *at* the said Burdett was, as these plaintiffs are now advised, at all times a promoter of said company and one of its incorporators, and became on its creation and organization one of its directors, and these plaintiffs aver and charge to be true that at the time of the incorporation of said Cedar Valley Land and Cattle Company, Limited, and before any stock had been subscribed to its capital stock, as a part of its charter, grant, constitution, and articles of association, one certain article, as appears by reference to said Exhibit "A," which, so far as the same is pertinent, is as follows:

"92. * * * It is expressly provided that, notwithstanding any rule of law or equity to the contrary, no contract or arrangement

entered into on behalf of the company with any company, corporation, or partnership of or in which any director shall be a member or otherwise interested shall be avoided, nor shall any director be liable to the company for any profit realized by such contract or arrangement by reason of such director holding that office or of any fiduciary relation thereby established. No director, however, shall vote in respect of any such contract or arrangement entered into with any private partnership of or in which he shall be a member or otherwise interested, but any director may vote in respect
36 of such contract or arrangement entered into with any company or corporation of or in which he shall be a member or otherwise interested;" and these plaintiffs further aver and charge to be true that the above and foregoing provision is now and at all times since the said company was incorporated has been unrepealed and in full force and effect, and that all the capital stock of said company which has been subscribed was subscribed while the same was so in full force, and of all which each and all of said stockholders had notice at and before subscribing for stock, and especially the said Stewart, Burnett, Campbell, Graham, Kingscote, and Fisher, who aided and personally helped to make said provision a part of its charter and articles of association.

That the Cedar Valley Land and Cattle Company, Limited, first came into existence, as aforesaid, on January 7th, 1885, after the contract had been made between the said Munson and the plaintiff Ewing, and after it was so created and incorporated made said contract its own, and to all which the said Munson agreed; and these plaintiffs further aver and charge the fact to be that the said company and each one of the aforesaid directors knew the terms and price to be paid for each item when they so agreed with Munson to take the contract made between Ewing and Munson for the ranch, and with such knowledge published to the world the great bargain obtained by the company for the ranch by the plaintiff Ewing, as will be seen by circulars issued by said company, hereto attached and marked Exhibit "B," which is a report on the ranch by the plaintiff Ewing made to George Burnett, Exhibit "C," Exhibit "D," and Exhibit "E," and prayed to be made a part of this answer; and the plaintiffs further aver and charge the fact to be that the said George Burnett was the director referred to in said exhibits as having visited said ranch and — acquainted with its condition.

37 These plaintiffs, further answering said cross-bill, say that under and by virtue of the agreement between them and the said George Burnett the said George Burnett cabled these plaintiffs in his own name to purchase said ranch and which the plaintiffs did.

These plaintiffs, further answering said cross-bill, say that their reasonable services and commissions in the sale of said ranch was worth the sum of fifty thousand dollars.

These plaintiffs, further answering, say that the Cedar Valley Land and Cattle Company, Limited, being desirous of having these plaintiffs subscribe to the capital stock of said company, these plain-

tiffs did agree to subscribe and did subscribe for $100,000 of the capital stock of said company upon the one and only condition that the said plaintiff Ewing should be made the manager of said company for five years, and to which the said company agreed, as is more fully charged in the petition of the plaintiffs; and the plaintiffs, under said agreement with said company, paid $50,000 on said shares of stock subscribed by them, and the said company appointed the said plaintiff Ewing manager for the period of five years, and, as stated at length and in greater detail in the petition of the plaintiff, and that continuously since then the plaintiff Ewing has been in the actual possession and control of said ranch and now is and has during all of said time performed all his duties with fidelity, economy, and profit to the company, and that said ranch and all its affairs is in the best possible condition.

These plaintiffs, further answering said cross-bill, say that the said Cedar Valley Land and Cattle Company, Limited, without reasonable excuse, did, on the 7th day of September, attempt to discharge the plaintiff Ewing as such manager, and without offer-
38 ing or tendering to him or to these plaintiffs or either or any of them the money or any part thereof subscribed by them, and without paying or offering to pay said Ewing or these plaintiffs any sum whatever for his services or his reasonable profits under and for the unexpired portion of said contract; that said company is indebted to him under said contract for services already rendered as such manager; that said company are indebted to these plaintiffs for and on account of advances made by them for said company.

These plaintiffs, further answering said cross-bill, deny the truth of the other allegations contained in said cross-bill.

And now, having fully answered said cross-bill, they pray for the relief as they have prayed in the petition filed by them herein.

KARNES & ESS &
WATERS & CHASE,
*Att'ys for Pl'ffs.*

STATE OF MISSOURI, } ss:
*County of Jackson,* }

W. N. Ewing and J. M. Coburn, being first sworn, on their respective oaths say that they have each heard read the foregoing answer, and that said answer and the facts therein stated are true, and further they say not.

JAMES M. COBURN.
W. N. EWING.

Subscribed and sworn to before me this 16th day of December, 1885. My commission will expire August 22, 1888.

[SEAL.] HENRY M. STONESTREET,
*Notary Public, Jackson Co., Mo.*

EXHIBIT A.

*The Companies Acts*, 1862 *to* 1883.

Company limited by shares.

*Memorandum of Association of The Cedar Valley Land and Cattle Company, Limited.*

1. The name of the company is "The Cedar Valley Land and Cattle Company, Limited."

2. The registered office of the company will be situate in England.

3. The objects for which the company is established are:

(1.) To buy, breed, graze, produce, and sell cattle, sheep, hogs, horses, and other live stock or agricultural products in the United States of America and elsewhere.

(2.) To acquire by purchase or lease or otherwise land or other real estate in the United States of America and elsewhere, and to sell or lease the same.

(3.) To manage and develop any real estate so acquired, and to aid in schemes for colonization and settlements by promoting emigration and settlement in every way thought advisable.

(4.) To aid in the formation of companies for the purchase, sale, improvement, and development of land and other properties, and to promote and support industrial and other enterprises connected with the purchase, sale, improvement, and development of the property and interests of the company.

(5.) To borrow or lend money for the general purposes of the company, and to receive money on deposit or debenture, and to make, accept, indorse, and execute promissory notes, bills of exchange, and other negotiable instruments.

(6.) To purchase or acquire the business or undertaking of any company having objects similar to those of this company, or to amalgamate with any such company, or to sell the whole undertaking of the company or any part thereof either to a company or to an individual or individuals for such consideration as the company may think fit, and in particular for shares, debentures, or securities of any other company having objects altogether or in part similar to those of this company.

(7.) To do all matters or things whatsoever incidental or conducive to any of the aforesaid objects.

4. The liability of the members is limited.

5. The nominal capital of the company (which may be increased) is £120,000, divided into 12,000 shares of £10 each.

We, the several persons whose names and addresses are hereunder subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital stock of the company set opposite our respective names.

| Names, addresses, and descriptions of subscribers. | No. of shares taken by each subscriber. |
|---|---|
| 1. Duncan Stewart, Fairlie House, near Kilmarnock, N. B., lieut. colonel | Five hundred. |
| 2. James Graham, 39 Ennismore Gardens, S. W., merchant | Three hundred. |
| 3. Thomas Arthur Fitzhardinge Kingscote, 39 St. James street, S. W., merchant | Two hundred. |
| 41 —. George Dixon Fisher, 116 Piccadilly, London, W., gentleman | Two hundred. |
| 5. George Granville Campbell, 2 Bryanstone square, London, W., gentleman | Three hundred. |
| 6. Thomas Edwin Webb, accountant, Morgate-street chambers, London, E. C. | One. |
| 7. Charles Stewart, 57 Coleman street, London, E. C., solicitor | One hundred. |

Dated this 7th day of January, 1885.

Witness the above signatures:

THOS. A. WILSON,
*Clerk to Messrs. Markby, Stewart & Co., Solicitors,*
*57 Coleman Street, London, E. C.*

42 *The Companies Acts,* 1862 *to* 1883.

Company limited by shares.

*Articles of Association of The Cedar Valley Land and Cattle Company, Limited.*

It is agreed as follows:

1. "The Cedar Valley Land and Cattle Company, Limited," is established as a company with a capital divided into shares, with limited liability, in accordance with and subject to the companies' acts, 1862 to 1883. None of the regulations contained in the table marked A in the schedule of the companies act, 1862, except so far as they are embodied in these articles, shall apply to the company.

1. Commencement of business.

2. The directors may commence the business of the company as soon after the incorporation thereof as they in their discretion shall think fit, though part only of the capital may have been paid up and part only of the shares may have been allotted and issued.

2. Share capital.

3. The capital of the company is, as expressed in the memorandum of association, £120,000, divided into 12,000 shares of £10 each.

4. Any person who shall have applied for any shares in the company, and to whom the same shall have been allotted, shall be deemed a member in respect of the shares allotted to him.

43 5. The shares shall be allotted by the directors and issued in such portions and at such times and to such persons and upon such terms and conditions as to prepayment of all or any portion of the capital represented thereby as the directors in their discretion shall from time to time determine. Whenever any shares are allotted in payment of work done, materials supplied, or services rendered to the company, such shares may be allotted as fully paid up.

3. Deposits and calls.

6. Any moneys which the directors shall on allotting any shares require to be paid by way of deposit or call or otherwise in respect thereof shall, immediately on the entry of the name of allottee in the register as the holder of such shares, become a debt due to and recoverable from the allottee by the company, and shall be paid by the allottee accordingly.

7. The directors may from time to time make calls upon the members in respect of all moneys for the time being remaining unpaid on their shares as the directors may think fit, and every member shall pay the amount of calls so made to the persons and at the times and places appointed by the directors, which said persons, times, and places shall be notified in the notice of call to be sent to the member. A call shall be deemed to have been made when the resolution of the board of directors authorizing such call was passed, and in default of payment of any money payable to the company by way of deposit or call at the time when the same shall be required to be paid, the member liable to pay the same shall be charged and shall pay interest thereon at such rate, not exceeding £10 per centum per annum, as the directors may fix, from the day appointed for payment thereof to the time of the actual payment, but without
44 prejudice to the provisions herein contained for the forfeiture of the share or shares in respect of which any money payable by way of deposit or call, as aforesaid, shall be payable. Joint holders of shares shall be both jointly and severally liable for calls thereon.

8. On the trial or hearing of any action or suit by the company for the recovery of any money required to be paid by way of deposit or call it shall be sufficient to prove that the name of the member sued is entered on the register as a holder of shares in respect of which the money is sought to be recovered.

9. The company may, if the directors think fit, receive from any of the members willing to advance the same all or any amount payable on their respective shares beyond the sums actually called for, and upon the moneys so paid in advance, or so much thereof as from time to time exceeds the amount of the call for the time being made upon the shares in respect of which such advance has been made, the company may pay dividend or interest, at such rate as the member paying such sum in advance and the directors may agree upon.

### 4. Evidence of title to shares.

10. Every member shall be entitled to receive gratis a certificate, under the common seal of the company, specifying the share or shares held by him and the amount paid up thereon.

11. If such certificate be worn out or lost it may be renewed on payment of such sum, not exceeding one shilling, as the directors may prescribe, and in case of a lost certificate, upon such terms as the directors may determine.

### 5. Transfer and transmission of shares.

12. The transfer books may be closed during such period as the directors may think fit.

45 13. No transfer of any share shall be entered on the register unless duly executed under seal both by the transferrer and transferee, and the transferrer shall, as between himself and the company, be deemed to remain the holder of such share until the name of the transferee is entered on the register in respect thereof.

14. The directors may refuse to register the transfer of any share in either of the following cases: If the transfer is made by a member who is indebted to the company and for the purposes of this article, but not otherwise, a member shall be deemed to be indebted in respect of a call made, although the time fixed for payment shall not have arrived, if the transferee shall fail to comply with the request made in pursuance of the next article.

15. Before approving or registering any instrument of transfer of any share the directors may, if they think fit, require the transferree to produce to and leave at the office of the company for examination the certificate of the share proposed to be transferred.

16. The executors or administrators of a deceased member shall be the only persons recognized by the company as having any title to his share. The company may disregard and shall in nowise be affected by notice of any trust to which any share may be subject.

17. Any person becoming entitled to a share in consequence of the death or bankruptcy of any member, or in way other than by some instrument of transfer, may be registered as a member upon such evidence being produced as may from time to time be required by the directors.

18. Any person who has become entitled to a share in any
46 way other than by some instrument of transfer may, subject to the approval of the board, instead of being registered himself, elect to have some person, to be named by him, registered as the holder of such share.

19. Upon the approval of the board being given, the person so entitled shall exercise his option by executing to his nominee a deed of transfer.

20. If several persons are registered as joint holders of any share or shares, any one of such persons may give effectual receipts for any dividend payable in respect of such share or shares.

21. No person shall be recognized by the company as having title

to any fractional part of a share, nor otherwise than as sole holder or as a joint holder of the entirety of such share.

22. If two or more persons shall be registered as joint holders of any share, the right of any of them dying shall rest, without other proof than of the death, in the survivors or survivor of such persons, and they shall alone be entitled to transfer such share.

23. All instruments of transfer shall be deposited with the company, and (if required) reasonable evidence shall be given to prove the title of the transferee, and thereupon such transferee shall be registered as a member. A fee not exceeding two shillings and six pence for each transfer may be charged, and may be dealt with in such manner as the directors may from time to time direct.

6. Forfeiture of shares.

24. If any member fails to pay any money payable by him to the company in respect of his shares on the day appointed by the directors for payment thereof, the directors may at any time thereafter, during such time as such money remains unpaid, serve
47 a notice on him or his executors or administrators, requiring payment of such money, together with any interest and expenses that may have accrued by reason of such non-payment.

25. The notice shall name a future day, not being less than fourteen days from the date of notice, and a place or places on or before and at which such payment is to be made. It shall also state that in the event of non-payment of such money, interest, and expenses at or before the time and at the place appointed, the shares in respect of which such money is payable will be liable to be forfeited.

26. If the requisitions of any such notice as last aforesaid shall not be complied with, any share in respect of which such notice has been given may be forfeited by a resolution of the directors to that effect.

27. Any money which shall be payable to the company in respect of shares which shall have been forfeited shall, notwithstanding such forfeiture, continue to be payable to the company, and shall be recoverable by them, with interest, from the forfeiting member or his representative.

28. Any share so forfeited shall be deemed to be the property of the company, and the directors may sell or otherwise dispose of, reallot, and re-appropriate or extinguish any share or shares which may have been forfeited for non-payment as aforesaid in such manner as they may think proper; and the directors may, in their absolute discretion, remit or annul the forfeiture of any share or shares which may have been declared forfeited for non-payment as aforesaid upon payment of all arrears and of all interest and expenses due thereon, together with such sum of money by way of fine
48 or upon such other terms and conditions as the directors shall determine upon.

29. All calls which shall have been made in respect of any forfeited shares prior to the forfeiture thereof, and which at the time of the re-allotment or appropriation thereof to any other person than the forfeiting owner or his representative shall remain un-

paid, shall, as regards the person to whom the same shall be allotted and appropriated, be for all purposes treated or considered as paid, unless expressly agreed to the contrary.

30. A declaration made by the secretary (in the form and manner required by law in the case of declarations in lieu of voluntary oaths) that the former holder of the forfeited shares made default in payment of the calls thereon, and that the forfeiture of a share had been declared at a board meeting after due notice, and the receipt of any two directors and the secretary of the company for the price of purchase-money of such share shall together constitute a good title to the purchaser, and he shall be discharged from liability to any calls which may have become due prior to his purchase (unless otherwise expressly agreed), and his title to the share shall not be affected by any irregularity in the proceedings in reference to any such forfeiture or sale.

7. Company's lien on shares.

31. The company shall always have a paramount lien on the shares of each member for securing to the company the payment or performance of all his debts, liabilities, and engagements to or with the company.

8. Conversion of shares into stock.

32. The directors may, with the sanction of a special resolution of the company previously given in general meeting, convert any paid-up shares into stock.

33. When any shares have been converted into stock the several holders of such stock may thenceforth transfer their respect-
49 ive interests therein or any part of such interests in the same manner and subject to the same regulations as and subject to which any shares in the capital of the company may be transferred, or as near thereto as circumstances admit.

34. The stock shall confer on the holders thereof respectively the same privileges, qualifications, and advantages as regards the participation in the dividends and profits of the company shall be conferred by any amount of stock which would not, if existing in shares, have conferred such privileges or advantages.

9. Share warrants.

35. The company may, according to the provisions of the companies act, 1867, with respect to any share which is fully paid up or issued as fully paid up or with respect to stock, issue under their common seal, at the cost as to stamp duty of the applicant, a share or stock warrant, stating that the bearer of the warrant is entitled to the share or shares of stock therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on the share or shares of stock included in such warrant.

10. Increase of capital.

36. The capital of the company may from time to time, with the sanction of a special resolution of the company, be increased to any

amount, notwithstanding that some of the shares shall remain unissued or unallotted or having been issued, shall have been forfeited, and notwithstanding any previous reduction of capital, and such increased capital shall be raised from time to time in such number of shares and of such amount or value or in stock and on such conditions and on such rights and privileges annexed thereto as the company by special resolution directs; and if no direction be given as the directors shall determine, and in particular such shares or stock may be issued with a preferential or qualified right to dividends and in the distribution of assets of the company and with a special or without any right of voting, subject as aforesaid and to any direction to the contrary that may be given by the special resolution sanctioning the increase of capital. Any capital raised by the creation of new shares or stock in pursuance of a special resolution shall be considered as part of the original capital and shall be subject to the same provisions in all respects, so far as the same are applicable, whether with reference to the payment of calls or the forfeiture of shares or non-payment of calls or otherwise, as if it had been part of the original capital.

37. If at any time the capital, by reason of the issue of preference shares or stock or otherwise, is divided into different classes of shares or stock all or any of the rights and privileges attached to each class may be modified by agreement between the company and any person purporting to contract on behalf of that class, provided such agreement is confirmed by an extraordinary resolution passed at a separate general meeting of the holders of shares of that class, and all the provisions hereinafter contained as to general meetings shall, *mutatis mutandis*, apply to every such meeting, but so that the quorum thereof shall be members holding or representing by proxy one-tenth of the nominal amount of the issued shares of the class.

38. The company may, with the sanction of a special resolution before the issue of any new shares or stock, determine that the same or any of them shall be offered in the first instance to all the then members in proportion to the amount of the capital held by them or make any other provision as to the issue and allotment of the new shares of stock, but in default of any such determination, or so far as the same shall not extend, the new shares or stock shall be subject to clause 5 hereof, so far as the same is applicable.

11. Reduction of capital.

39. The company may from time to time reduce its capital and the number and nominal value of the shares into which such capital is or may for the time being be divided.

12. Borrowing powers.

40. The directors may at any time and from time to time without any further sanction or authority create and issue debentures or debenture stock to be secured upon the whole or any part of the undertaking and property of the company, including its uncalled capital for the time being. Such debentures or debenture stock may be issued for any term at such rate of interest for such nominal

amount and at such price and generally on such terms as the directors may think fit.

41. The total amount of the debentures or debenture stock raised under the last clause and in force at any one time shall not exceed the amount of the company's uncalled capital for the time being.

42. In addition to the powers given to the directors by the 40th clause hereof for raising money on debentures or debenture stock they may from time to time, at their discretion, borrow from the directors, members, or other persons any sum or sums of money required for the purposes of the company, and such sum or sums may be received on deposit or secured in such manner as the directors think fit.

43. Every debenture or other instrument for securing the payment of money issued by the company may be so framed that the monies thereby secured shall be assignable free from any equities between the company and the person to whom the same may be issued.

52 44. Any debentures, bonds, or other securities may be issued at a discount, premium, or otherwise.

45. The directors shall cause a proper register to be kept in accordance with section 43 of the companies act, 1862, of all mortgages and charges specifically affecting the property of the company.

46. The directors may convert any debentures that may be issued into bebenture stock.

## 13. General meetings.

47. A general meeting shall be held within four months after the date of these presents, and thereafter shall be held yearly in the month of January, or so soon as may conveniently be thereafter, and on such day as the directors may determine. The before-mentioned general meetings of the company shall be called ordinary general meetings, and all other general meetings shall be called extraordinary general meetings. The general meetings shall be held at such place as the directors may from time to time appoint.

48. The directors may, whenever they think fit, and they shall upon a requisition made in writing by any number of members holding not less than one-sixth of the shares in the company upon which all calls shall be or shall be deemed to have been paid, convene an extraordinary general meeting.

49. Any requisition so made by the members shall express the object of the meeting proposed to be called and shall be left at the office of the company.

50. Upon the receipt of such requisition the directors shall forthwith proceed to convene an extraordinary general meeting, and if at the expiration of twenty-one days from such receipt they shall not have proceeded to convene a meeting the requisitionists

53 may themselves convene a meeting for the objects expressed in such requisition, so that such meeting shall be held within two calendar months from the time at which the requisition for such meeting shall have been left at the office of the company as aforesaid.

51. Fourteen days' notice at the least of every general meeting, specifying the place, the day, and the hour of meeting, and, in the case of an extraordinary general meeting, the purpose for which it is to be held, shall be given either by advertisement in a London daily paper or by written or printed notice sent to each shareholder or in such manner as may be prescribed by the directors. In order to take part in the proceedings of a general meeting members whose shares are represented by share warrants must deposit their share warrants at the principal office of the company or at such place or places as the board of directors shall from time to time appoint at least three clear days before such general meeting. In exchange for shares so deposited the secretary shall give a receipt, which will have to be produced by the member at the general meeting.

52. Resolutions not previously approved by the directors cannot be moved by any member at any general meeting unless he has given at least ten days' previous notice to the directors of his intention so to do by leaving a copy of the resolution proposed at the the office of the company.

53. No business shall be transacted at any general meeting whilst the chair shall be vacant, and, except at adjourned meetings, no business shall be transacted at any general meeting (other than the election of a chairman, the declaration of a dividend, or the adjournment of the meeting) unless members holding not less than one-tenth of the shares then issued are present, either in person or by proxy, at the commencement of business.

54 51. If within one hour from the time appointed for the meeting members holding the required number of shares be not present, the meeting, if convened upon the requisition of the members, shall be dissolved. In any other case it may be adjourned by the chairman to such time and place as he shall appoint.

If at such meeting members holding not less than one-tenth of the shares shall not be present, any number of members qualified for voting at general meetings who may be present may proceed to transact, and shall be competent to transact, the business, but only the business for which the meeting was called and which might have been transacted if members holding the required number of shares had been present.

55. The chairman, if any, of the company shall have the right to preside as chairman at every general meeting.

56. If there is no such chairman, of if at any meeting he is not present at the time of holding the same or shall decline to take the chair, the members present shall choose another director, or if no director be present, or if all the directors present decline to take the chair, then some one of their number, to be chairman of such meeting.

57. The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place; but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting of which it may be the adjournment.

58. If any general meeting shall be adjourned for more than seven

days, notice of such adjournment shall be given to all the members in the same manner as notice was given of the original meeting.

59. Subject as hereinafter mentioned all matters which
54½ shall come under the consideration of the general meeting shall, unless a poll is demanded, as hereinafter mentioned, be decided by a simple majority of the votes of the members present, personally or by proxy, and qualified to vote, as hereinafter provided, and such majority shall be decided by a show of hands or by dividing the meeting, and in all cases where the votes are equal the chairman of the meeting shall have a casting vote in addition to his original vote, provided, always, that if any three members personally present at any general meeting shall before the conclusion thereof in writing demand a poll such poll shall be taken at or before the conclusion of such meeting or at any other time (within fourteen days) after the conclusion of such meeting as the chairman of such meeting shall direct, or in the absence of any such direction or sufficient direction given by him, then as the directors shall determine, and the meeting shall, if requisite, be adjourned to receive the result of the poll; but the demand of a poll or any adjournment of a meeting for the purpose of taking the same shall not prevent the continuance of a meeting for the transaction of any business other than that on which a poll shall have been demanded.

60. Every member voting, either in person or by proxy, upon any poll to be taken as aforesaid shall be entitled to such number of votes in respect of the shares held by him as is hereinafter provided, and on every question upon which a poll is taken the chairman of the meeting at which the poll was directed shall, in the event of the votes being equal, have a casting vote in addition to his original vote.

## 14. Votes of the members.

61. Except as hereinafter mentioned every member shall have one vote for every share, whether preference or ordinary, held by him.

62. If any member is a lunatic or idiot he may vote by his
55 committee, *curator bonis*, or other legal curator, and if any member is a minor he may vote by his guardian, tutor, or curator or any one of his guardians, tutors, or curators, if more than one, but no such committee, curator, guardian, or tutor shall be entitled to vote unless he shall have delivered notice in writing at the office of the company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote of his claim to vote and of the character in respect of which he shall so claim.

63. If two or more persons are jointly entitled to a share the person whose name stands first in the register as one of the holders of such share shall alone be entitled to vote in respect of the same.

64. No member shall be entitled to vote either at any meeting or upon a poll unless all moneys due from him to the company in respect of his shares shall have been paid, nor shall he be reckoned in the quorum requisite for constituting a general meeting.

65. Votes may be given either personally or by proxy, and all appointments of proxies shall be in the form or to the effect following (that is to say):

I, the undersigned, —— ——, one of the members of the Cedar Valley Land and Cattle Company, Limited, do hereby appoint —— —— to be my proxy to vote and to act for me at the general (or extraordinary general) meeting of the company which is to be holden the — day of —— and at every adjournment thereof and every poll which may take place in consequence thereof.

Dated this — day of ——, one thousand eight hundred and ——.

56 Or in such other form as the directors shall from time to time appoint, and no instrument of proxy shall have any force or effect except for the particular meeting for which the same shall be expressed to be given or for any adjournment thereof and for any poll which may take place at or in consequence of any such meeting or adjournment thereof.

66. No person shall be appointed a proxy unless the instrument appointing him shall be deposited at the office of the company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote.

67. Except when assembled at a general meeting, and as composing such general meeting, and by resolutions to be duly passed thereat, or by votes of members to be duly given, as prescribed by these articles, or as empowered by statute or by the company's regulations, the members, individually or collectively, shall have no power of controlling the directors or of interfering with the officers, business, property, or concerns of the company in any manner whatever.

15. Directors and their powers.

68. The number of directors shall not be more than seven nor less than five unless a general meeting shall otherwise prescribe.

69. The following-named persons shall be the first directors of the company, viz: Lieutenant Colonel Duncan Stewart, Lord George Granville Campbell, George Burnett, Esq, James Graham, Esq., Thomas Arthum Fitzhardinge Kingscote, Esq., and George Dixon Fisher, Esq.; and they shall hold office until the ordinary meeting in the year 1888, and shall have power at any time before the ordinary general meeting to be held in the year 1886 to appoint any other persons to be directors of the company, but so that the
57 whole number of directors shall not exceed seven.

70. The qualification of every director shall be the holding in his own right of shares or stock in the company of the nominal value of £2,000.

71. The business of the company shall be managed by the directors, who may exercise all such powers of the company as are not by the companies act, 1862, or these articles declared to be exercisable only by the company in general meeting, and no regulation made by the company in general meeting shall invalidate any prior act

of the directors which would have been valid if such regulation had not been made.

72. The directors shall, subject to the powers of the general meetings, so far as the controlling power may in pursuance of or in conformity with the company's regulations be lawfully exercised over the directors by general meetings, have the entire management of the business and affairs of the company.

73. Without limiting or controlling any general or other power or authority hereby given to the directors, either expressly or by implication or which is or may be vested in them or exercisable by them by virtue of their office, they shall have the following specific powers, viz:

(*a.*) They may, by the signatures of any two of them, countersigned by the secretary, or in such other manner as the board may from time to time direct, in the name and for the purposes of the company, make, draw, accept, or endorse any promissory note, bill of exchange, or other negotiable instrument.

(*b.*) They may make any contract and affix the seal of the company to any deed or document and incur any debts or liabilities as they may think fit in the name or on behalf of the com-
58 pany in relation to its property, business, or affairs.

(*c.*) They may, in the name of the company, purchase, rent, acquire, and hold for the business of the company and again sell, let, surrender, or otherwise dispose of any freehold, leasehold, or other buildings, lands, and hereditaments as they shall in their discretion see fit, and erect any buildings, sheds, depots, steam-engines, or other machinery, and purchase, rent, or acquire all such plant, utensils, stock in trade, and things for the business of the company as they shall in their discretion see fit.

(*d.*) They may lay out and invest any of the moneys of the company in such manner as they (the directors) may think proper, and may generally regulate and control the custody, management, expenditure, and application of the moneys and funds of the company as they shall think fit, but they shall not apply any of the moneys of the company in the purchase of shares of the company.

(*e.*) They may accept such title to property as they may think reasonably safe. They may give time for the payment of any money owing to or for the performance of any engagement with the company, and may alter, vary, or cancel any agreement or arrangement or arrangements entered into by or with the company, and may satisfy any demand against the company upon such evidence as they may think reasonably sufficient (whether legally admissible or not), and institute, defend, conduct, and compromise, terminate, and abandon any suit, action, or other proceeding relating to the property or affairs of the company, and may compound for or aban-
don or delay to enforce any debt, claim, or demand of the
59 company, and may settle any question affecting the company by arbitration, opinion of counsel, certificate of accountant, or in such way and manner and on such conditions as they may think best, and may dispute wholly or partially any award.

(*f.*) They may appoint or concur in or permit the appointment of

any of themselves or any other person or persons to accept and hold in trust for the company any lands or easements or rights in lands or any exclusive or other beneficial rights or privileges in which the company may be interested, and generally all property, rights, powers, or privileges of any description whatsoever which may be beneficial or advantageous to the country or in or to which the company may be or become interested, and may cause all such deeds and things to be made and done as shall be requisite to vest the same in the persons so appointed and may fix their remuneration and pay the same out of the funds of the company.

(*g.*) They may empower and authorize any director or the secretary or any other person to represent and act for the company in all matters relative to the recovery of claims on persons indebted to the company.

(*h.*) They may give a receipt, signed by any two or more of them, countersigned by the secretary, or in such other manner as the board may from time to time direct, which shall be an effectual discharge on behalf of and against the company for the moneys or property which in such receipt shall be acknowledged to be received, and shall fully exonerate the party to whom such receipt shall be given from any obligation in respect to the application or misapplication of the money or property expressed to be received.

60 (*i.*) They may appoint and subject to any existing agreements, may change the bankers, solicitors, secretary, manager, and all other officers of the company, and determine their respective duties and powers, and fix the amount of their emoluments and pay the same out of the funds of the company.

(*j.*) They may from time to time make, vary, and repeal by-laws for the regulation of the business of the company, its officers and servants, or the members of the company, or any section thereof.

(*k.*) They may transact and carry out any of the business or objects stated or referred to in the memorandum of association.

(*l.*) They may sell and dispose of all and any of the property and assets of the company and, with the sanction of the company in general meeting, may accept in payment for the same shares or bonds or debentures of any other company, but so that such shares, bonds, or debentures shall be fully paid up and involve no liability to this company.

(*m.*) They may, before recommending any dividend, set aside out of the profits of the company such sum as they think proper as a reserve fund to meet contingencies or for equalizing dividends or for repairing, improving, and maintaining any of the property of the company, and for such other purposes as the directors shall, in their absolute discretion, think conducive to the interest of the company, and they may invest the several sums so set aside upon such investments as they may think fit, and may from time to time deal with and vary such investments and dispose of all or any part thereof for the benefit of the company, and they may divide the reserve

61 fund into such special funds as they think fit.

74. The directors shall cause the banking account of the

company to be kept in the name of the company, and cheques thereon shall be signed by one or more of the directors and countersigned by the secretary.

75. The directors may be paid out of the funds of the company all actual outlay on behalf of the company, including travelling expenses incurred by order of or sanctioned by the board.

16. Remuneration of directors.

76. Until it shall be otherwise determined at a general meeting the directors (exclusive of any managing director or directors) shall be paid out of the funds of the company, by way of remuneration for their services, a sum of £1,000 per annum, which shall be divided amongst the directors in such manner as the directors may from time to time determine. The directors may direct the payment of additional remuneration to any director for special services rendered to the company beyond the ordinary services of a director.

17. Disqualification of directors.

77. The office of any director shall be vacated if by reason of mental or bodily infirmity he shall become incapable of acting;

If he become bankrupt or seek relief from his debts by composition or arrangement with his creditors under any act or acts of Parliament for the relief of insolvents; but no such vacation of office shall take effect until a minute thereof shall have been entered in the directors' minute book;

If he shall cease to hold the required qualification.

62 18. Rotation of directors.

78. At the ordinary general meeting to be held in the year 1888 and at the first ordinary general meeting to be held in every subsequent year two of the directors then in office shall retire from office.

79. A retiring director shall be re-eligible.

80. The company at any general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of persons to be directors.

81. Whenever an election of directors in lieu of retiring directors might or ought to take place at any general meeting and shall not take place the retiring directors or such of them as have not had their places filled up shall hold office until successors to them shall have been duly appointed.

82. Any casual vacancy occurring in the direction by death, resignation, or otherwise than by retirement under the provisions of article 67 may be filled up by the directors. Any person chosen to fill a casual vacancy under the provisions of this article shall retain his office until the next general meeting at which an election of directors ought to take place in pursuance of the provisions of these articles, and he shall be eligible for re-election. The continuing directors for the time being may act notwithstanding any vacancy in their body or that the number may have fallen below the prescribed quorum.

83. Any director may be removed from his office by a special vote

of the shareholders if the resolution passed removing him from his office be carried by votes representing three-fourths of the share capital of the company.

19. Proceedings of directors.

84. The directors shall meet together at the offices of the company or other convenient place in London for the despatch of business, adjourn, and otherwise regulate their meetings and the proceedings thereat as they shall from time to time think fit, and may from time to time fix and determine the quorum necessary for the transaction of any business, not being less than two in number, or for forming a board meeting, and may make such regulations in the nature of by-laws on these subjects as they shall from time to time think fit.

85. All questions arising at any board meeting (except as herein is excepted) shall be determined by a majority of votes, and in case of an equality of votes the chairman of the meeting, in addition to his original vote, shall have a casting vote. Two directors or the secretary may at any time, until otherwise determined by the directors, summon a meeting of the directors.

86. Until otherwise determined by the directors, two directors shall be sufficient to form a quorum, and may exercise all the powers exercisable by the directors.

87. The directors may from time to time elect a chairman of the company, who shall continue in office for such period as the directors shall from time to time determine, and whilst in office he shall take the chair at the board meetings.

88. The directors may (subject to any agreement in force for the time being) appoint any person being a director to be managing director of the company under such terms and conditions as to his or their powers and duties in such capacity, the duration of office, remuneration, and otherwise as they may think proper.

89. The directors may delegate any of their powers to committees, consisting of such number of members of their body as the directors may think fit. Any committees so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors, who shall always have a veto over the resolutions of committees.

90. A committee may, subject to the regulations (if any) imposed by the directors, elect a chairman *be elected*, or if he be not present at the time appointed for holding any meeting or decline to take the chair the members present shall choose one of their number to be chairman of the meeting.

91. A committee may (subject to any regulations imposed by the directors) meet at such place, either in or out of the United Kingdom, and adjourn, as they may think proper. Questions at any committee meetings shall, subject as aforesaid, be determined by a majority of votes of the members present; and, in case of an equal division of votes, the chairman (if any) shall, subject as aforesaid, have an additional or casting vote.

92. All acts done by any board meeting or by a committee of

directors shall, notwithstanding any latent or unknown defect or informality in the qualification or in the appointment of any person acting as director at any such meeting or upon any such committee, be as valid as if such person had been duly appointed and qualified, and the acts or proceedings of any board meeting or committee meeting shall not be invalidated by reason only that any director, from accidental omission or from his absence from home or from his address being unknown, shall not have received due or regular notice of any such meeting being about to be held. It is expressly provided that, notwithstanding any rule of law or equity to the contrary, no contract or arrangement entered into on behalf of the company with any company, corporation, or partnership of or in which any director shall be a member or otherwise interested shall be avoided, nor shall any director be liable to account to the company for any profit realized by such contract or arrangement by reason of such director holding that office or of any fiduciary relation thereby established. No director, however, shall vote in respect of any such contract or arrangement entered into with any private partnership of or in which he shall be a member or otherwise interested, but any director may vote in respect of any such contract or arrangement entered into with any company or corporation of or in which he shall be a member or otherwise interested.

93. The directors shall cause minutes to be made in books provided for that purpose—

(1) Of all appointments of officers made by the directors;

(2) Of the names of the directors present at each meeting of directors or of a committee of directors;

(3) Of all orders made by the directors and committees of directors; and

(4) Of all resolutions and proceedings of meetings of the company and of the directors and of the committees of directors.

And any such minutes as aforesaid, if signed by the chairman of the meeting at which the acts and proceedings so minuted took place or by any two directors who were present thereat, shall be receivable in evidence without any further proof as *prima facie* evidence that the matters and things recorded by or appearing in such minutes actually took place or happened as so recorded or appearing.

20. Common seal.

94. The directors shall provide a common seal for the purposes of the company, and may from time to time change the same, and such seal shall be kept by such person and in such manner as the directors may think fit, and the directors shall have full power to use the said seal in the execution of all the powers hereby vested in them or otherwise in relation to the affairs and business of the company as they shall in their discretion see fit. The powers given by the companies seals act, 1864, may be exercised by the company, and the directors shall be competent to exercise such powers.

## 21. Dividends.

95. Subject to the rights of members entitled to shares issued upon special conditions, the profits of the company shall belong to the members in proportion to the amount paid up on the shares held by them respectively: Provided, nevertheless, that where money is paid up in advance of calls under clause hereof, upon the footing that the same shall carry interest, such money shall not, whilst carrying interest, confer a right to participate in profits.

96. No dividend shall be payable except out of the profits arising from the business of the company.

97. Notice of any dividend that may have been declared shall be given to each member or sent by post or otherwise to his registered place of abode, and all dividends unclaimed for one year after having been declared may be invested or otherwise made use of by the directors for the benefit of the company until claimed.

98. No dividend or interest shall bear interest as against the company. The directors may deduct from the dividends payable to any member all such sums of money as may be due from them to the company on account of calls or otherwise.

99. The receipt of the person whose name for the time being appears on the register as the owner of any share shall be
67 a good discharge to the company in respect of all payments made in respect of such share. If two or more persons are registered as the owner of any share the receipt of any one of them shall be a good discharge to the company for all payments made in respect of such share.

## 22. Accounts.

100. The directors shall cause true accounts to be kept of the sums of money received and expended by the company and the matter in respect of which such receipt and expenditures take place, and of the assets, credits, and liabilities of the company, and of all matters and things necessary for showing the true state and condition of the company.

101. The directors shall, at the ordinary general meeting to be held in every year, submit a statement of the net income of the company, made up to such date as the directors may appoint.

102. On the accounts being passed by the meeting they shall be binding, final, and conclusive on every shareholder.

## 23. Audit and inspection of accounts.

103. Once at the least in every year the accounts of the company shall be examined and the correctness of the balance-sheet ascertained by the auditor or auditors. The first auditors shall be elected by the directors and shall continue in office until the ordinary general meeting of the company to be held in the year 1886.

104. The auditors need not be members of the company, and no director or other officer of the company shall be eligible to be an auditor during his continuance in office as director or other officer.
68 The election of auditors shall be made by the company at

the first ordinary general meeting in the year 1886 and in every subsequent year, and if no auditor or auditors be then elected an auditor or auditors may be elected by the directors.

105. The remuneration of the auditors shall be fixed by the directors and may be varied from time to time as they may think fit.

106. Any auditor shall be re-eligible on his quitting office.

107. If and whenever there shall be no duly appointed auditor the board of trade may, on the application of one-half in number of the members of the company, appoint an auditor for the current year and fix the remuneration to be paid to him by the company for his services.

108. Every auditor shall for fourteen days after the period to which the accounts for the year are made up have access to the books and accounts of the company.

## 24. Notices.

109. Notices by the company to the members shall be deemed to have been sufficiently given if served on them personally or left at their places of abode appearing in the register or put into the post office, addressed to them at such places of abode.

110. Whenever there shall not have been registered in the books of the company a probate of the last will or letters of administration of the estate of a person continuing to be registered as a member in the register, but who shall have died, a notice to his executors or administrators shall for all purposes be valid if addressed to the name of the person so continuing to be registered as a member and left at his registered place of abode or put into the post office, addressed to the name of such person at such place of abode, notwithstanding the death of such person and although the company
69 may have had express notice of his death.

111. A notice given to any one or more of the owners of any share which may be subject to joint ownership shall be a sufficient notice to all the joint owners of such share.

112. All notices required by these articles to be or which may be given by advertisement shall be advertised in a London daily paper and shall be deemed sufficiently given if so advertised.

114. All notices, if served by post, shall be deemed to have been served at the time when the letter containing the same shall or ought to be delivered in the ordinary course of the post, and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post office.

114. All notices required to be given to the company or the directors thereof by members shall be addressed to the directors and left at or sent through the post in a prepaid letter addressed to the office of the company.

115. The proceedings of any general meetings shall not be invalidated by reason of the non-receipt of any notices given by letters, or of the unintentional misdirection of any letters, or of the unintentional omission to send letters to any of the members, or of any other unintentional mistake or omission.

116. Any notice requiring authentication by the company may be signed by the chairman of the company or the secretary or other officer of the company thereunto authorized by the directors, and whenever the signature of any person is required to authenticate any notice it may be either printed or written.

25. Indemnity to directors, &c.

117. The directors and officers of the company shall be indemnified out of the funds of the company against all costs,
70 charges, losses, damages, and expenses which they shall respectively incur or be put in the execution of their respective offices or by reason or on account of any contract, act, deed, matter, or thing which shall be made, done, permitted, entered into, or executed by them respectively on behalf of or *bona fide* in the interest of or with the view of benefiting the company, notwithstanding that the same may be *ultra vires* in point of law, and any such director or other officer shall be chargeable only for so much money as he shall actually receive on behalf of the company, and they respectively shall not be answerable for the acts, receipts, neglects, or defaults of each other, but each of them for his own acts, receipts, defaults, or neglects only, nor shall they respectively be answerable for any banker, broker, collector, or other person appointed by the directors with whom or into whose hands any property or moneys of the company may be deposited or come, nor for the insufficiency of the title to an estate or property which may from time to time be purchased by order of the directors on behalf of the company, nor for the insufficiency of any security upon which any of the moneys of the company shall be invested by order of the directors, nor for any loss or damage which may happen in the execution of their respective offices unless the same shall happen through their own respective wilful neglect or default.

Names, addresses, and descriptions of subscribers.

1. Duncan Stewart, Fairlie House, near Kilmarnock, N. B., lieut.-colonel.

2. James Graham, 39 Ennismore Gardens, S. W., merchant.

3. Thomas Arthur Fitzhardinge Kingscote, 39 St. James street, S. W., merchant.

4. George Dixon Fisher, 116 Piccadilly, London, W., gentleman.

71 5. George Granville Campbell, 2 Bryanstone Square, London, W., gentleman.

6. Thomas Edwin Webb, accountant, Morgate Street Chambers, London, E. C.

7. Charles Stewart, 57 Coleman street, London, E. C., solicitor.

Dated the 7th day of January, 1885.

Witness the above signatures.

THOS. A. WILSON,
*Clerk to Messrs. Markby, Stewart & Co., Solicitors,*
*57 Coleman Street, London, E. C.*

72 EXHIBIT B.

*Report on the Ranch and Range by W. N. Ewing.*

KANSAS CITY, MO., *August 13th*, 1884.

I left here, via Dodge City, on the 23rd of July, and owing to some delays it required six days to reach the ranch, situated in Randall county (Pan Handle of), Texas, being about 250 miles southwest from Dodge City, Kansas, about 200 miles east from Las Vegas and Springer, New Mexico, and about 200 miles from Wichita Falls, Texas, these being the nearest points at present to a railroad. Five days were required to complete the examination, and herewith I hand you my report of the property.

Lands.—The lands owned in fee, about 75,000 acres, with the option of 25,000 more in fee, lie adjacent to and along the valley of the Palo Duro creek, as shown in the accompanying map (lying in the secretary's office for inspection). The lands are supplied with an abundance of living running water, while at the extreme headwaters of these running streams the water is often in pools, sometimes very deep, and feed by springs, making it ever overflowing, and in some cases sinks and again appears further down the stream. Portions of these lands reach and extend beyond the breaks of the streams and reach the level plain, where are situated many large lakes that hold water only a portion of the year and in rainy seasons. Tanks or ponds can be constructed in most of these lakes or in the draws leading into them, thereby distributing water at advantageous distances along and over the entire plain.

The lands in block No. 6 and block No. 5, coloured red, are the leased lands, and embrace most of the cañons of the Palo Duro and Tierra Blanca. However, the breaks of these cañons extend
73 far above and about as shown upon the map, and are supplied with an abundance of running water and springs.

The lands coloured yellow in block No. 8 and block No. 2 are on the level plain, and watered only from lakes. The pasture fence should have been built on the northern boundary of these tracts, which would have enabled the Palo Duro to have supplied water for the stock grazing on the greater portion of these lands.

The lands coloured purple on the south and west are situated on the plains, and are supplied with water only from the lakes on the plains and the waters in the breaks and the arroyos leading into the Tierra Blanca. I am informed that the breaks or draws of the Tierra Blanca extend as far west as New Mexico, and along this entire length there are occasional pools and springs that soon sink and disappear. Such being the case, there is no doubt but that a good permanent supply of water can be had by constructing or digging deep tanks in the bed of this stream. On the plains, away from the streams, are always to be found any number of lakes which hold an abundance of water most of the time, and I am told it seldom happens that all are dry at the same time. On the first day of August I saw one lake with a good supply of water on about survey No. 50,

block B 5, and two lakes near the southwest corner of block 2 Z, in the purple-coloured land, around which had collected from the open plains below a thousand antelope, which I saw at one sight, and many wild horses. Tanks can be constructed on the head of the dry arroyos and in the draws leading into the lakes similar to those on the ranges of the Hansford Land and Cattle Company and Adair and Goodknight's, which are holding water successfully.

Grass.—The nature and quality of the grasses *that* on all these
74 lands is similar to that of the grasses on adjacent ranches, to wit, "Adair and Goodknight's," "D. T. Beals'," "Dixon Creek pasture," "Lee Scott Cattle Co.," &c., being mostly mesquite or buffalo and gramma grasses, and in quantity compares favourably with any adjoining range. The weather was and had been very dry for some time past and afforded an excellent opportunity to judge of both the grass and the water supply. The grass along the breaks and cañons is mostly mesquite, gramma, blue stem, and bunch grass. The latter, being an early variety, furnishes grazing in the early spring. Gramma grass mostly prevails in the valley of the cañons.

Loco.—There is no loco on this ranch or range, thereby preventing the large losses of horses caused by eating this poisonous herb.

Cañons.—The cañons of the Palo Duro, from the very headquarters to the eastern limit of the ranch, are sufficiently broken to afford first-class protection in the winter, the upper half being a light cañon and beautiful valley skirted with hackberry, china, and cottonwood timber, while the lower portion becomes a deep, rugged cañon, filled with fine cedar, cottonwood, and other timber, and affording the most complete shelter and winter quarters imaginable. This cañon varies in depth from 100 feet at its head to 400 feet where it leaves the range and becomes several miles in width, containing many interesting and grand landscape views, the smaller streams emptying into the Palo Duro, with the exception of the extreme headquarters of each, which rise nearer to the level of the adjacent plains, and are more accessible for stock-grazing in this vicinity. The winter protection on the upper ten miles of the Tierra Blanca and for about ten miles from the center of block B 5 is very good,
but not so complete as the Palo Duro affords. The other por-
75 tions of the Tierra Blanca Valley become so broad and the bluffs so low and gradual that they would not be considered good winter protection. Along the valley of the Tierra Blanca where it becomes almost a plain are several thousand acres of as fine hay land as I ever saw on the western plains, and which will produce annually from one to two tons per acre of the best quality of hay. The bed of most of the dry lakes and the edges of all of them (some of which contain more than a thousand acres) produce a fine quality of hay.

Timber.—There is an almost unlimited quantity of fine cedar in the lower Palo Duro cañons and other timber, as before mentioned, suitable for the construction of houses, stables, corrals, fences, or for any other use for which timber might be required. In fact, only

cedar has been used in the construction of every house, corral, stable, fence, or other improvements on the ranch.

Corrals.—There are six corrals already constructed, all of cedar, in good repair, and first class in every respect.

Fencing.—The fencing consists of about 75 miles, as shown on the map, and is constructed of first-class large cedar posts 40 feet apart, with four stays between and four strands of galvanized steel-barbed wire, well built in every respect, 20 miles of which is owned jointly by adjacent ranches. In addition to the wire fences there are about ten miles of breaks of the cañons used as fences.

Home ranch.—At the home ranch there is a comfortable cedar log house well built, containing five rooms, one and a half stories high, with cook-room adjoining; also near by a spring-house and splendid storehouse (genuine adobe) 20 by 40 feet, blacksmith's shop, sundry store-rooms, and a splendid stable constructed of large cedar logs, made comfortable for taking care of 40 head of
76 horses that are needed for use in winter; also shelter for wagons, etc., etc. There are also seven out-camps on the range.

Cattle.—The cows were originally Texas cattle, of average size, and are in fine condition, and, from the vigorous and healthy appearance of the calves, have proved themselves to be excellent mothers. The bulls are about 20 per cent. of their number Texans, the remaining 80 per cent. being graded short-horns, and are all two years old and over and in good condition.

I estimate that of the young cattle (two years old and under) about 80 per cent. show to be graded stock and compare favorably with the same-aged cattle of the neighbouring ranches. The remaining 20 per cent., which are straight Texans, look larger, more vigorous, and superior in every way to Texas cattle bred further south or the original stock. I think every Texas bull should be marketed and about 100 bulls of a higher grade added at once. I may say the cattle generally were as fat, if not in a better condition generally than the cattle I saw on other ranches, with a few exceptions. The cattle will be counted in any way that may be agreed upon.

Horses.—The horses are first-class cow horses, in good condition generally. There are 16 head of extra good mules, which, with the horses, make about 200 head in all. The horses are cheap enough at 50 dols. per head, and being really more in numbers than are actually required to do the work is the reason they are in such good condition. The 16 head of mules are worth 125 dols. to 150 dols. per head in any market.

Equipments.—The equipments consist of four wagons, one good buggy, one mowing machine, hay rake, several ploughs, harnesses, complete set of blacksmith's tools, &c.; about 20 or 30 head of hogs thrown in.

77 Extensions.—If the construction of tanks is a success the limits of this ranch can be extended westerly to the borders of New Mexico, southerly about thirty miles, and in a southwesterly direction almost indefinitely.

The fence running from the corner of survey 85, block B 5, south-

easterly across the range should be taken up and rebuilt directly south until it joined the contemplated fence on the south of the range, thereby enclosing a complete pasture for winter feeding. Perhaps it would be well to rebuild this entire western line of fence three miles further west. You could hold your cattle all summer and fall on the open plain to the west by constructing tanks and otherwise providing water. The fence extended on the south would prevent them from going in that direction, and the want of water, if you only constructed tanks, say, forty miles from the fence, would keep them from drifting westerly. If necessary, two men could be put on the westerly limit to ride that line. However, while I think it is useless to build a fence on the extreme west line, it could afterwards be done if experience should demonstrate it to be advantageous.

General remarks.—The three great essential points in a ranch are an abundance of water, plenty of grass, and complete shelter. This ranch not only enjoys all these advantages in a pre-eminent degree, but its water is well distributed, with grass unsurpassed, and its protections are as fine as you could desire. The streams abound in mosses and fish, showing the water to be everlasting, and the adjoining plains with an abundance of game. There is no reason why this property, properly stocked, should not prove a good investment. Bad management is the only thing that I can see which will prevent it from paying handsome profits. This ranch adjoins
78 the celebrated Palo Duro ranch, owned by Messrs. Adair and Goodknight, claimed to be the finest ranch in the world, and the claim is well founded; also on the north by the ranches of D. T. Beals and others, and compares favorably with them.

(Signed) W. N. EWING.

79 EXHIBIT C.

The list of applications will close on Thursday, 18th December.

The Cedar Valley Land & Cattle Company, Limited, to be incorporated under the companies acts, 1862 to 1882; capital, £120,000, in shares of £10 each (with power to increase).

Upwards of half of the necessary capital is already subscribed privately in this country and America.

It is proposed to call up £5 per share and to raise the balance on debentures—

£1 per share to be paid on application,
£1 on allotment,
£1 on 1st February, 1885,
£1 on 15th March, and
£1 on 15th April;

or calls may be paid in advance at any of the above dates under discount at the rate of 5 per cent. per annum.

It is intended to apply for a quotation of the shares on the London Stock Exchange.

Directors.

Lieut. Col. D. Stewart (chairman Western Mortgage and Investment Company, Limited), Fairlie House, Kilmarnock, N. B.

Lord George G. Campbell (director Western Land and Cattle Company, Limited), 2 Bryanstone Square, London, W.

G. Burnett, Esq., Dundee (director Hansford Land and Cattle Company, Limited).

James Graham, Esq. (director Western Mortgage and Investment Company, Limited), 39 Ennismore Gardens, London, S. W.

T. Kingscote, Esq. (director Scittish Amicable Life Assurance Society), 59 St. James street, London, S. W.

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Bankers.

Messrs. Fuller, Banbury, Nix & Co., 77 Lombard street, London, E. C.

The Clydesdale Bank, Glasgow, Edinburgh, and branches.

Solicitors.

Messrs. Markby, Stewart & Co., 57 Coleman street, London, E. C.

Secretary.

Mr. Thomas E. Webb.

Brokers.

Messrs. Egerton, Jones, Simpson & Co., 3 Copthall buildings, London, E. C.

Messrs. Robertson & Co., 31 George street, Edinburgh.

Office.

Morgate street chambers, Morgate street, London.

*Prospectus.*

This company is formed for the purpose of carrying on the business of cattle-ranching in the United States of America.

A provisional agreement has been made for the purchase of lands, leases, cattle, and other property situated principally in Randall county, in the Pan Handle of the State of Texas.

The property consists of about 20,000 head of cattle, 200 horses and mules, about 75,000 acres of land in freehold, with the option of 25,000 more in fee, with water rights; about 179,200 acres of land, under a seven years' lease, at 1½ cents per acre per annum, together with very extensive range rights, and all fencing, houses, corrals, outfits, and improvements.

One of the directors, who has had large experience in the management and valuation of cattle ranches, has recently visited a portion of the property and satisfied himself of its value, but reference is made particularly to the report (which accompanies
81 this prospectus) by Mr. W. N. Ewing, of Kansas City, Mo., a gentleman well known for his extensive experience of cattle

and land in the Western States of America, and with whom two of the directors had recently had personal communications in America on the subject.

There are about 75 miles of excellent fencing on the property. There is abundance of water over a large portion of the range, and the grass is excellent and the winter shelter very good.

It is intended to work the property as a breeding ranch, selling the year-olds. The cows now on the ranch are particularly well adapted for this purpose, and the percentage of increase on this and the immediately adjoining ranches is fully equal to any in Texas. To increase the breeding stock it is intended to purchase about 7,000 additional cows.

There are not now nor have there ever been any small herds of cattle on the range belonging to other persons than the present proprietor.

The range is capable of running a large increase over the number of cattle now on it.

The losses of cattle during the past three years has not exceeded 1½ per cent., while the increase from the number of cows over two years old has amounted on this and an adjoining ranch to over 90 per cent.

Mr. Ewing estimates that the expense of running the ranch will not exceed 65 to 75 cents per head per annum.

The cost of the herd will not exceed twenty dollars per head. The purchase price of cattle, lands, range and water rights, leases, fencing, and all implements and improvements will be about 550,000 dols., and the cattle will be counted over and the titles to the land verified previous to the final payment of the purchase-money.

82 The directors and their friends will hold a very substantial interest in the company, as will also some parties in America, who personally know its value.

The business of cattle-ranching is now so generally understood and the profits capable of being derived from it so well known that it is not considered necessary to comment on the subject. It is intended to place the company's business under the local management of a gentleman whose experience and discretion in such business is well known and has been well tested and who has consented to act in that capacity and to invest a large sum in the company's shares. Most of the directors of the company have had experience in the business, and there seems no reason to doubt that considerable profits will be made, from the exceptionally favorable circumstances connected with this property and the low price at which it will be acquired, in consequence of the present commercial depression in America and of the payment of the full price in cash. The directors have shown their confidence in the value of the property by personally undertaking the responsibility for all the preliminary expenses of the company without any consideration, present or future, beyond simple repayment of the amount actually expended. No promotion money in any shape has been or will be paid.

If no allotment is made the amount paid on application will be returned in full.

Application forms and copies of the prospectus, with Mr. Ewing's report, may be obtained of the secretary, and reports and other original documents may be inspected at the office of the company or ther solicitors.

Applications for shares to be sent to the company's bankers, either in London or Scotland.

December, 1884.

83 EXHIBIT D.

The Cedar Valley Land and Cattle Company, Limited.

Incorporated under the companies acts, 1862 to 1882; capital, £120,000, in shares of £10 each (with power to increase).

Directors.

Lieut. Colonel D. Stewart, chairman.
Lord George G. Campbell.
George Burnett, Esq.
James Graham, Esq.
T. A. F. Kingscote, Esq.
G. D. Fisher, Esq.

Solicitors.

Messrs. Markby, Stewart & Co., 57 Coleman street, London, E. C.

Bankers.

Messrs. Fuller, Banbury, Nix & Co., 77 Lombard street, London, E. C.
The Clydesdale Bank, Glasgow, Edinburgh, and branches.

Secretary.

Mr. Thomas E. Webb.

Registered office of the company.

Morgate street chambers, Morgate street, London.

The Cedar Valley Land & Cattle Company, Limited.

Report of the directors, submitted to and approved by the first general meeting of the shareholders, held at the company's offices, Morgate chambers, 302 Morgate street, London, on the 4th day of March, 1885.

The directors have taken the somewhat unusual course of summoning the first general meeting of the company two months before the expiration of the period allowed by the act of Parlia-
84 ment in order to take the earliest opportunity of laying before the shareholders the precise terms and full particulars of the contract which has been concluded between Mr. W. N. Ewing, on behalf of the company, and Mr. W. B. Munson, the late pro-

prietor of the Cedar Valley ranch, and which had not reached this country in time for publication in the prospectus.

Early in the month of January, this year, Mr. Coburn, the senior partner in the firm of Messrs. Coburn & Ewing, of Kansas City, visited this country on the business of the Hansford Land and Cattle Company, who possess a large ranch (of which Mr. Coburn is the manager) in the Pan Handle of Texas, some 75 miles to the north-east of the Cedar Valley ranch. Your directors had the advantage of meeting Mr. Coburn on several occasions, and received from him much valuable information in regard to the ranch which they had just acquired. From him they learned that Mr. Ewing's engagements would permit of his paying a short visit to England in the month of February, and it was consequently decided that advantage should be taken of this opportunity to enable those members of the board who were not already personally acquainted with Mr. Ewing to make his acquaintance and to satisfy themselves that his views and their own were thoroughly in accord on the very important questions of the general policy and details of the management of the ranch. Mr. Ewing accordingly arrived in London on the 20th February, and has remained here since that date in constant communication with the board. Your directors believe that the shareholders will coincide in their opinion that important advantages have been gained by these interviews and by Mr. Ewing's presence on this occasion.

It may, perhaps, be interesting to the shareholders to be made aware of the circumstances which preceded the purchase of
85 the range. In the summer of last year it had become known to some of your directors, who were then in America, that an opportunity might occur of acquiring this very desirable range under exceptionally favourable circumstances. The late owner, Mr. Munson, was engaged some years ago on a survey of the whole lands in that district, and, taking advantage of the knowledge thus acquired, he secured for himself a very considerable quantity of the best freehold land in Randall county. The event fully justified his selection of a range; and in summer of 1884, when circumstances entirely unconnected with ranching rendered it necessary for him to realize his property, he found himself the possessor of a herd of cattle which his books showed to amount to 22,500 head, besides horses and mules, freehold and leasehold land, buildings, fencing, equipments, &c. The prices he demanded for the property were as follows, viz:

| | |
|---|---|
| 22,500 cattle at $22 per head | $495,000 |
| 200 horses and mules at $50 per head | 10,000 |
| 100,000 acres freehold land at $2 per acre | 200,000 |
| 179,200 acres leasehold land, held for seven years at 1½ cents per acre—value of lease | 25,000 |

It will be observed that the value of the cattle is set down at $495,000 or $22 per head for the numbers borne upon the books, or, in other words, the estimated.

Your directors, however, being well aware of the much better

terms which are obtained by a direct and immediate offer of a cash payment than by an offer comprehending an option to purchase, accompanied, perhaps, by the payment of a considerable portion of the purchase-money in stock of the company, thereby involving a greatly enhanced price, did not attempt to come to terms
86 with Mr. Munson till the 23rd December last, when they cabled to Mr. Ewing instructions to open negotiations with Mr. Munson on the basis which they had previously arranged with the former in a letter dated on the 5th of that month. Mr. Ewing at once proceeded to Denison, and, after a negotiation which was protracted for four days, signed on behalf of the company the contract which now lies in this office for the inspection of shareholders, and of which the following is a synopsis:

The contract, dated 31st December, 1884, between W. B. Munson, of Grayson county, Texas, and W. N. Ewing, of Kansas City, Missouri, provides for the sale by the former and the purchase by the latter of—

Land.—About 75,000 acres in Randall and Deaf Smith counties, in the State of Texas, being all the lands owned solely by the said Munson in the said counties, at the price of $2 per acre. The schedule annexed, in which the lands are specified, shows that about 78,000 acres will be made over. Good and sufficient titles to the land are to be granted within 60 days from 1st May, 1885.

Cattle.—To be collected and delivered at the expense of the said Munson up to 1st August, 1885, at the following prices:

| | | | |
|---|---|---|---|
| Bulls for 75 per cent. of their number | | | $60 |
| Do. | 25 | do. | 18 50 |
| All other cattle | | | 18 50 |

And also 5 per cent upon the value of the above cattle so delivered in full of the value of the undelivered remnant.

Horses and mules.—Collected and delivered as above at $50 a head.

Fencing.—The assumption of a contract for the construction and removal of about 47 miles of fencing now in course of erection, such liability not extending beyond $9,000.

87 Leased lands.—The lease of 179,200 acres for six years from 1st January, 1885, at 1½ cents per acre.

All buildings, corrals, and equipments, with about 75 miles of excellent fencing already erected, and all other property on the ranch to be handed over without payment.

Rent and taxes to be paid by the purchaser from 1st January, 1885.

Expenses of men employed at the ranch to be paid by the vendor to 1st August, 1885, with the exception of those of five men to be employed by the purchaser in taking over the cattle, twenty-five of the seller's horses and two spans of his mules being made over to these five men for their use when demanded.

The contract further provides that $100,000 of the purchase-money may remain unpaid till the 1st January, 1886, bearing interest at the rate of six per cent. per annum, and for penalties in the case of the non-fulfillment of the contract by either party; and there is a

separate agreement that $17,500 of the last instalment, payable on 1st August, 1885, shall be retained by the purchaser as a rebate to defray the expenses of the formation and establishment of the company.

It will be seen from a comparison of the prices asked last summer with those actually fixed by the contract of the 31st December that Mr. Munson has made the following very important concessions: (1) The valuable lease for six years from 1st January, 1885, of 179,200 acres at the very low rent of 1½ cents per acre, which was valued last year at $25,000, has been ceded without consideration; (2) the price of $22 for the estimated number of cattle has been reduced to $18.50 per counted head, exclusive of bulls (or about $19.23 per head, the valuable Kentucky breed short-horn bulls included), this price being less by upwards of $5¾ than the price paid
88 by one neighboring company in 1882 for its estimated number of cattle, and also less by upwards of $5¾ than the price paid in 1884 by an adjoining company; (3) the payment by the vendor of all the ordinary current ranch expenses connected with the collection and delivery of the cattle; (4) the transfer without payment of the good will of the ranch and of 75 miles of excellent fencing, with all equipments, buildings, corrals, and improvements on the ranch; (5) the option of deferring until 1st January, 1886, the payment of the final instalment of $100,000, and (6) a rebate from the last instalment, payable on 1st August, 1885, of the sum of $17,500 to defray the expenses of the formation and establishment of the company. It is believed that this sum will more than suffice for that purpose, in which case the surplus will be carried to the credit of the company.

In view of these numerous and important concessions, none of which were announced in the prospectus, Mr. Ewing agreed upon his side that Mr. Munson should be paid at the rate of 18.50 per head for all calves actually branded and delivered by him before 1st of August, a number which Mr. Ewing estimates may amount to half the calf crop of the year. At the time of delivery these animals will be worth about $12 a head, and it should not be forgotten that Mr. Munson will deliver, if his book tallies are correct, about 2,500 steers of three years old and upwards collected and ready for market, which may be expected to realize in September nearly $30 a head.

The counting over of the cattle has from the beginning been considered by the directors to be a condition of the first importance; indeed, the absolute necessity for it is apparent from the experience of other companies.

Mr. Munson may probably make the first delivery of cattle
89 about the middle of June, and will continue his deliveries at intervals as his round-ups come in until the 1st August, at which date all cattle bearing his brand, of any description whatsoever, within or without the limits of the range, become the property of the company without payment, Mr. Munson being only entitled under his contract to add 5 per cent. to the price of the cattle already de-

livered to cover the value of all cattle remaining uncollected at that date.

Under all these circumstances and considerations the directors congratulate the shareholders on the contract as it stands. When they enter on the 1st August next into full possession of their property and their herd they will find themselves in possession of a herd purchased at exceptionally low prices and the numbers of which are to no extent a matter of uncertainty.

Mr. Fisher, one of the directors of the company, who has already visited America — is well acquainted with ranching business and in whose capacity for the purpose the directors have full confidence, will, together with the manager in America, Mr. Ewing, and the local superintendent of the ranch appointed by the company, superintend and certify to the delivery.

There is only one other point which need now be referred to. It was stated in the prospectus that a substantial interest would be held by subscribers in America who personally knew the value of the property. The amount to be subscribed by these gentlemen in cash was announced as $80,000, or somewhat more than £16,000. This very handsome subscription was understood to be exclusively for the shares of the company, but it now appears that the subscribers intended and now wish to take a portion of their subscription
90 in debentures, which leaves some shares still unsubscribed for. Five hundred additional shares have been subscribed for by various members of the board; but the directors are desirous that the remaining numbers should be taken up, and they trust that the present shareholders will give their assistance towards this object, either by increasing their present holding or by bringing the undertaking to the notice of their friends. The remaining shares will be allotted in the order of application, and the dates of payment of instalments will be as follows: £1 on application, £1 on allotment, and the remainder in equal monthly instalments, or the whole may be paid on any of the above dates under discount at the rate of 5 per cent. per annum.

The policy pursued by the directors has been to raise, on the lowest possible terms, the minimum amount required for the undertaking, in order that no large amount of dead capital should weigh upon the resources of the company. Their arrangements have placed them in an exceptionally favourable position for accomplishing this important object, and, the whole of the capital raised being thus in safe and profitable employment, the directors have every reason to anticipate a very satisfactory balance-sheet upon the 31st December next.

DUNCAN STEWART, *Chairman.*
THOMAS E. WEBB, *Secretary.*

The report having been submitted, it was adopted by the meeting upon the motion of Mr. J. B. Kingscote, seconded by Mr. A. W. Fulcher.

In the course of the conversation which followed it was explained by Mr. Ewing that the company's profits for the present year would

be derived partly from the sale of yearlings and partly from the sale of fat steers. There would also be a considerable number
91 of fat steers ready for sale next year, besides an increasing number of yearlings, and there would also be a constant supply of barren and superannuated cows which would yield good prices.

Mr. W. N. Ewing, in answer to a further question from a shareholder, stated that Mr. Charles Goodnight had informed him that for the year 1884 the calf brand upon his adjoining ranch of Quitaqui had been at the rate of 95 per cent. upon the tally of cows of three years old and upwards, and that upon his home ranch of Palo Duro, also adjoining the Cedar Valley ranch, the percentage of calves, calculated as above, was 101½ per cent., the excess being accounted for by the number of two-year-old heifers who had borne calves.

After some further conversation, in which Mr. Ewing and several shareholders took part, the proceedings terminated.

The Cedar Valley Land & Cattle Co., Limited. Report of the directors to the first statutory general meeting on 4th March, 1885.

92 EXHIBIT E.

The Cedar Valley Land & Cattle Company, Limited. Incorporated under the companies acts, 1862 to 1882. Capital, £120,000, in shares of £10 each (with power to increase).

Directors.

Lieut. Colonel D. Stewart, chairman.
Lord George G. Campbell.
James Graham, Esq.
T. A. F. Kingscote, Esq.
G. D. Fisher, Esq.

Solicitors.

Messrs. Markby, Stewart & Co., 57 Coleman street, London, E. C.

Bankers.

Messrs. Fuller, Banbury, Nix & Co., 77 Lombard street, London, E. C.
The Clydesdale Bank, Glasgow, Edinburgh, and branches.

Secretary.

Mr. Thomas E. Webb.

Registered office of the company.

Morgate street chambers, Morgate street, London.

Interim report to be submitted by the directors to an extraordinary general meeting to be held at 30*a* Morgate street on Wednesday, the 8th July, 1885, at 10.30 a. m.

The directors have much pleasure in submitting to the shareholders a report of the transactions connected with entering into possession of their property in America.

Land.—On the 1st May last good and sufficient titles,
93 which had been examined and approved by the company's solicitors in America, for 73,837.71 acres were made over to the company, and a sum of £31,511 9*s.* was remitted in full payment of their price.

Cattle.—On the 3rd April last one of the directors, Mr. G. D. Fisher, sailed for New York, and after a few days spent in Kansas City, in communication with Mr. Munson, the vendor of the ranch, and Mr. Ewing, the company's manager in America, he proceeded to the ranch to superintend the counting, branding, and delivery of the cattle. Mr. Fisher has been in constant communication with the directors, and they learn with much satisfaction from all his letters—which lie at the office for the perusal of shareholders—that he is thoroughly pleased with the ranch in all respects, not only in regard to the three essential requisites of water, grass, and shelter, but also in regard to the quality and condition of the cattle. In regard to the other important point, that of their numbers, the anticipations of the directors, founded upon the careful calculations made by Mr. Ewing from the experience of neighboring ranges, have been more than realized, and are the most convincing proof both of the healthy and of the productive character of the range. At the date of the last advices from the ranch, dated 16th June, 15,800 head of cattle had been counted and counterbranded in presence of Mr. Fisher and Mr. Ewing, and had been handed over to the company and placed within separate enclosures, after being classified and entered in the herd book. These cattle were paid for on the 18th June by a remittance by cable. At that date it was estimated that a further number of about 10,000 head might be collected and delivered before the 1st August, a number about 4,000 in excess of Mr. Ewing's calculations after a careful estimate of the calf brand and death rate of the herd since its formation, in 1880.

94 The following statement of actual and ascertained numbers given in Mr. Fisher's letters will serve to show more clearly the large increase in the number of the herd since its formation in 1880: In that year it was commenced by the purchase of 2,000 head, and in 1881, 1882, and 1883 there were bought, respectively, 6,100, 5,700, and 5,000 cattle, making a total of 18,800 purchased. In 1882 there were sold 2,000 head, a number equal to the entire original herd, and the two following years 4,350 head, making 6,350 in all; and if, as is now estimated, 26,000 cattle are handed over before 1st August, an increase of 13,,00 head will be shown since its formation in 1880. In estimating the importance of these figures it must be remembered that the very small number of the original herd shows how rapid and great has been the increment in the last three years.

The directors have also been fortunate to acquire at very reasonable prices a small neighboring herd of well-graded and thoroughly acclimatized cattle, comprehending some very fine bulls and 28 seasoned horses, the latter of which were urgently required. The purchase of these cattle has been made on a very satisfactory basis of payment in shares, £5 paid, an arrangement which not only materially strengthens the company by the enlargement of its American proprietary, but which affords the most convincing proof of the confidence entertained in America in the position and prospects of the company.

To meet the payment of this herd and for the cattle which will probably be delivered in excess of the number originally estimated by Mr. Ewing it is proposed to create 3,000 shares in terms of the notice endorsed hereon, the original capital of £120,000 having been fully subscribed. Of these 3,000 shares the directors do not intend to issue more than are found to be absolutely necessary to provide the funds required for the purpose above mentioned, as it has always been and continues to be their policy to work the ranch with the smallest possible amount of capital consistent with the due development of its capabilities. These shares will be allotted to subscribers in the order of their application, preference being given to existing shareholders, all of whom are invited to second the efforts of the directors in taking up or placing the shares. Forms of application for this purpose are enclosed herewith.

95

The directors will themselves subscribe for a number of new shares proportionate to their original holdings.

In considering their response to this announcement shareholders are requested to bear in mind that the necessity for the step has been caused by the highly important fact—now indisputably proved by the evidence of an actual count—that not only has the calf brand exceeded and the death rate fallen short of the most careful calculations of experts, but that these extremely satisfactory results are obtained notwithstanding the two winters of 1883–'4 and 1884–'5, the exceptional severity of which on other ranges less sheltered than their own caused such very heavy loss. It should also be remembered that the additional number of cattle to be delivered by Mr. Munson must of necessity operate very favorably upon the receipts and dividends of the present and future years.

DUNCAN STEWART, *Chairman.*
THOMAS E. WEBB, *Secretary.*

The Cedar Valley Land and Cattle Company, Limited.

Interim report to be submitted by the directors to an extraordinary general meeting to be held at 30*a* Morgate street on Wednesday, the 8th July, 1885, at 10.30 a. m.

96

The Cedar Valley Land and Cattle Company, Limited.

Notice is hereby given that an extraordinary general meeting of the Cedar Valley Land and Cattle Company, Limited, will be held at the company's office, Morgate street chambers, No. 30*a* Morgate street,

on the 8th day of July, 1885, at 10.30 o'clock in the forenoon, when the subjoined resolution will be proposed :

*Resolution.*

That the capital of the company be increased to £150,000 by the creation of 3,000 new shares of £10 each.

The resolution as passed, with or without modification, will be submitted for confirmation as a special resolution to a second extraordinary general meeting which will be held at the company's office on Thursday, the 23rd day of July, 1885, at 10 o'clock in the forenoon.

By order of the board.

THOMAS E. WEBB, *Secretary.*

Company's offices, Morgate street chambers, London, E. C., 22nd June, 1885.

97 Afterward, to wit, on the 31st day of December, A. D. 1885, the following affidavit was filed :

In the Circuit Court of the United States for the Western Division of the Western District of the State of Missouri.

THE CEDAR VALLEY LAND AND CATTLE COMPANY, Limited, Plaintiffs,
*v.*
WILLIAM N. EWING and JAMES M. COBURN, Defendants.

1. We, Duncan Stewart, George Granville Campbell, James Graham, and Thomas Fitzhardinge Kingscote, Charles Stewart, and Thomas Edwin Webb, severally make oath and say as follows :

We, the said Duncan Stewart, George Granville Campbell, James Graham, and Thomas Arthur Fitzhardinge Kingscote, together with George Dixon Fisher, who is now in America, are the directors of the plaintiff company. We have been directors of the company since its formation in December, 1884, and there have been no other directors excepting George Burnett, who died in the month of March in the present year. It was proposed in the first instance that the company should be called the Palo Duro Land and Cattle Company, but the name of the Cedar Valley Land and Cattle Company was afterwards adopted. I, the said Charles Stewart, am now solicitor and have been so since its commencement, and I, the said Thomas Edwin Webb, am secretary to the said company, and have been so since its commencement, and all of us deponents are perfectly cognizant of all the matters and things hereinafter mentioned.

2. The company was formed for the object and under the circumstances stated in the prospectus, produced herewith and marked A.

98 All the statements made in the prospectus were true, to the best of our knowledge and belief, and we took every means which were available to us to satisfy ourselves of their truth.

3. The defendants, William N. Ewing and James M. Coburn, as well as the said George Burnett, one of the directors, acted as agents

for the company in the purchase of the property. The property was first brought under our notice in the summer of 1884 by Mr. Burnett, who had been at Kansas City and elsewhere in Missouri and Texas during that year on business connected with another company in which he was interested. On 5th August, 1884, Mr. Burnett wrote to Mr. Phillips (who was then acting as secretary to the intending purchasers and who it was proposed to appoint as secretary to the company when formed, but who afterwards found that he was unable to undertake those duties on account of numerous other avocations) a letter, of which the following is a copy:

DUNDEE, *5th Aug.*, 1884.

Mr. Paul Phillips.

DEAR SIR: I have this morning received a letter from Mr. W. N. Ewing, dated Kansas City, 23rd ulto., of which I enclose you a copy, contents of which please communicate to the parties interested. I think the matter of securing the proceeds of this season's sale of beeves in any contract that may be made is of importance in view of a dividend at the end of this year.

Yours faithfully,

(S'g'd) GEO. BURNETT.

*Extract from the Letter Received from W. N. Ewing, Esq.*

KANSAS CITY, 23 *July*, '84.

I have wired you this morning as follows: Leave to-day (to) examine Palduro, hereby confirming same. I note your instructions & will examine fully on all points desired & others of interest if any come before me.

99 In conversation with Mr. Munson I learn he intends selling or driving his beef within next 30 days; consequently would suggest that if it was desirable to include this year beef in the contract that no time be lost after receipt of my report, should it be favorable. After I have examined the property will wire you (perhaps from Mobeetie) at once "property satisfactory" or "property unsatisfactory," as the case may be, thereby foreshadowing the nature of my report.

4. Mr. Burnett informed us that he thought very highly of the property and that he considered the price to be exceedingly low, and that he thought we could secure the services of Messrs. Coburn & Ewing or of Mr. William N. Ewing, one of the partners in that firm, as manager of the ranch. The following is a copy of a letter dated 13th August, 1884, addressed by Mr. Burnett to Colonel Stewart, one of our number:

INVERTROPACH BY CALLENDAR, *13th Aug.*, 1884.

MY DEAR SIR: I duly received your last note. I am quite favorably impressed with Mr. Ewing's business capacity; both Mr. Coburn, who acts for our company, and he are first-class business men and men of standing as well as intelligence. I consider it a great

advantage, in the event of this new company going on, that there are two partners, as one can more frequently be absent.

I have been here with my friend, Mr. G. A. Cox, and to-day heard from my partner that Ewing cables favorably after his inspection of the ranch. We must now await his report, which may be here in 23 days. We received a letter from Mr. Coburn at our ranch, dated 21st July, on the 12th current. Nothing could be done in the meantime, at all events, as people are all moving about or in the country. I have been feeling an old rheumatic joint lately, and am going over to Hamburg from Leith on Saturday, the 16th current;
100 from thence my wife and I go on, via Berlin and Dresden, to Wildad, where I will likely receive Ewing's report. I will at once send a copy to Mr. Phillips, and whenever you fix a meeting in London I will meet you there. Any letter addressed to me, Dundee, will at once be forwarded.

Did you fix with the other parties interested to be in London on the 2nd Sept. or only about that time?

I presume Lord G. Campbell will be the principal active agent in floating the company; if so, I think he should have a very complete arrangement with brokers all over the country by sending papers and writing letters to every likely person to induce them to take stock.

I reach Dundee on Friday, the 15th current, and go to Leith on Saturday, the 16th, in the afternoon, sailing at 8 p. m.

Yours truly, GEORGE BURNETT.

Colonel Stewart, Fairlie House.

The following is a copy of a letter addressed by Mr. Burnett's firm to Mr. Phillips:

DUNDEE, 14*th Aug.*, 1884.

Paul Phillips, Esq., Western Land and Cattle Co'y, L'd.

DEAR SIR: Mr. Burnett has received a cable from Mr. Ewing, of Kansas City, and he has asked us to advise you of the same and to ask you to inform the parties interested of its receipt. The cable message was the word "favorable."

We are, dear sir, yours faithfully,

(S'g'd) GEO. BURNETT & CO.

The following is a copy of a letter addressed by Mr. Phillips to Colonel Stewart:

Lieut. Colonel Duncan Stewart.

101 Western Land and Cattle Company, Lim'd.

15 COCKSPUR STREET, LONDON, S. W., *5th Sept.*, 1884.

Lieut. Colonel Duncan Stewart, Fairlie House, Kilmarnock.

DEAR SIR: The following telegram has just been received from Mr. Coburn—*i. e.*, Mr. Ewing:

"Useless attempt option at any price without payment; better terms can be made by you enabling us make direct offer with par-

tial payment." I communicated this to Mr. Burnett and Lord George Campbell by telegram, and have advised Colonel Francis, Mr. Wellesly, and Mr. Graham by letter.

Sir W. Power only just called in as the office was closing last night. He had been too much occupied to read the papers of the Palo Duro ranch, and said under any circumstances he would not join the board. I gave him our message as to Mr. Graham and suggested that he should go through the papers and return them to-day. I have just seen Sir William, who has returned the papers. He thinks well of the ranch, but doubts if it is possible to float any ranch co'y. in the present state of the market. Sir William said he had enough on his hands, so that, even if it floated, he could not join the board.

I waited to hear Sir W. Power's movements. He was uncertain last evening. He leaves for "Doohat Clowes," Co. Monaghan, Ireland, to-morrow morning.

I now beg to enclose copy of Sir W. Power's memo. for your consideration, together with copy of Mr. Mackenzie's report on the Preston Beck ranch.

I am, dear sir, yours faithfully,

PAUL PHILLIPS, *Secretary.*

102 P. S.—I beg to enclose letter from Mr. Mitchell and report from Prairie Co.

The following is a copy of a letter addressed by Mr. Burnett to Colonel Stewart:

SEAFIELD COTTAGE, BROUGHTY FERRY, 11 *Sept.*, 1884.

MY DEAR SIR: I have received yours of yesterday enclosing Phillips' letter, which I have sent on to your brother. Phillips is entirely wrong regarding printing and advertising—getting subscribers—at least so far as Scotland is concerned, and, if there be a good broker, as far as other places where there are business men.

I have a letter from your brother wanting me to go to London and to be there on Monday, first. I will go to Edin'h to-morrow night and go up on Saturday to No. 33 Jermyn street. I thought he would want some advice. I have written Francis.

There should not be more than 5 directors; and, so far as Scotland is concerned, I do not think they care much about titled ones, but if the company can be floated through their means then it is quite right.

I hope you will have an agreeable time in America. I am sure you will be much benefited in a business and cattle point of view from being there. Again will I impress upon you the reliability of Coburn and Ewing, particularly in cattle, but also in mortgage. They do considerable business in real estate. You may depend upon it that good, honest Americans are necessary to conduct business in America.

Yours truly, GEO. BURNETT.

103 Colonel Stewart, Fairlie House.

5. Mr. Burnett also stated that Messrs. Coburn & Ewing or Mr.

Ewing would act for us in the purchase of the property from Mr. Munson, and he assured us that they could make better terms for us in the purchase than any other person. We had no knowledge or suspicion that either Mr. Ewing or Mr. Coburn or any other person had stipulated for or were to receive any commission or payment whatsoever from the vendors in connection with the purchase. If we had had any knowledge or suspicion of any such fact we should have declined to enter into the transaction, as it would have shown us that Mr. Coburn and Mr. Ewing and Mr. Burnett were not disinterested advisors and that they were working for their own interests. We were also strongly impressed with the belief that it was by the payment of commission to agents and others that many undertakings of this kind *was* brought to disaster, and we were determined that there should be nothing of the kind in the present instance. It was therefore specially stated by us in the prospectus produced herewith (see page 3 of the prospectus) that no promotion money in any shape had been or would be paid. Proofs of this prospectus containing this statement were sent to the defendants in the autumn of 1884.

6. I, the said Duncan Stewart, proceeded to Kansas City in September, 1884, on the business of the Western Mortgage and Investment Company, Limited, of which I am a director, and of the Western Land and Cattle Company, Limited, in which I am a large shareholder, and when there I had several conversations with Messrs. Coburn and Ewing on mortgage business and ranching in general and on Mr. Munson's ranch in particular. I did not, however, occupy myself much with the question of the purchase of Mr. Munson's ranch.

In any communication which I had with Messrs. Coburn
104 and Ewing it was distinctly understood that they were acting as our agents, and that they would be remunerated for any trouble which might be thrown upon them in the negotiations for the purchase by their being appointed managers to the company.

7. In the beginning of November, 1884, Mr. Burnett received from Mr. Ewing the letter dated 22nd October, 1884, of which the following is a copy :

3 Walworth Block, Kansas City, Mo.,
*Oct. 22nd*, 1884.

Geo. Burnett, Esqr., Dundee, Scotland.

My Dear Sir: Your cable saying, "If Ewing takes thirty thousand more and Munson will take two hundred thousand in stock and debentures, &c.," duly rec'd, and we replied we were unable to place more than eighty thousand dollars with Munson or otherwise, and this morning I am in receipt of your cable 22nd, saying Cresswell had taken $625,000 in stock and debentures, and unless Munson and myself responded likewise there was no hope, &c. This was received during the absence of my partner, who has been called to Dodge City to attend shipment of some 1,200 Hansford beeves, and as he has been doing the most of the correspondence I am at a

loss to know how to write. However, I know the facts and will endeavor to give them to you.

In the first place, if Mr. Munson has to take anything else save money he would want a sufficient amount over and above his actual price to cover all chances of loss in sale of the stock and debentures so received, and had he been shrewd enough to have asked such an exorbitant price as Cresswell is getting he would, I presume, be glad to take the surplus in stock and debentures. There is a large difference between actually counting out cattle at $22.00 per head than counting them partially at $27.50 to $30.00, and land at $2.50 per acre and land at $2 per acre.

Mr. Munson has sold his beeves in the markets here, and for which he received, for a portion of them, about $32.00, and he sold about time the market was the lowest. This leaves him about 20,000 head cattle and 75,000 acres of land in fee—that is to say I found out he only owned 75,000 acres in fee, and in order to make up the 100,000 originally offered he was intending, or rather had an option of 25,000 acres for a less figure, say $1.50. This being the case, it would require to buy him with the money as follows—or, rather, this is my judgment:

| | |
|---|---|
| 20,000 head cattle, all classes & ages, at $20.00 | $400,000 |
| 75,000 acres land & improvements | 150,000 |

for this sum, cash in hand, or payable $100,000 every 30 days, would, in my opinion, buy his cattle and land, and if we were placed in this position with the cash, we have good reason to believe we could make him throw in his leases, business, horses, equipments, &c., and would include $25,000 for the promoters to float the company. Now, if we take $80,000 from that it would only leave for your syndicate to raise additional, in actual money, $445,000 to settle with Munson, $25,000 going to the promoters, for which it seems reasonable they would be willing to accept stock and debentures I do not say this can be done positively, but I believe it and while it leaves us short on hand it leaves — in possession of the business and gives us the opportunity to raise the money for the purchase not only of this additional 25,000 acres, but of all the land required for the use of the company. And while I am on this point let me say no one is or will be so foolish as to buy the land in this range when all the water is owned by others; therefore I am willing to take my chances to buy these lands as cheap as Mr. Munson can, and just as satisfactory, and finally secure them for the company without having to pay any exorbitant price. Now, it does seem to me that such a sum could be raised for such a vast property much easier than 296,000 pounds could be for the Cresswell property, notwithstanding he agrees to take $625,000 himself.

On the other hand, let me say that Mr. Munson's price is $730,000.00, and if we have to pay him in anything else than the cash he will not budge a cent. The fact is, he is pushed for money, and that is the reason why he is offering his property so cheap. Another is he is not a cattle man, and wants to get out of the business and out of debt. The condition of our finances this year has

been exceedingly annoying to persons owing large amounts, and no doubt large debts have been hard to arrange, and I venture to say that after having passed through the bitter experiences of this summer Mr. Munson would be very loth to part with a man who had the cash without making a sale of his ranch. Moreover, I defy any one to point me out such a property for such a price. Such a bargain has not been offered for many a day.

My idea is when you can see your way clear to raise the amount indicated herein is to give us instructions to buy at the best figures we can and place us in possession of the money to enable us to dictate our own figures and terms, and for the remainder required we would have to take the chances that we could raise it in time.

Mr. Clay estimates the value of Cresswell's property as follows:

| | |
|---|---|
| 35,000 head cattle, @ 27.50 | £198,028 |
| 150,000 acres of land, @ 2.50 | 77,165 |
| Horses, mules, fences, &c. | 4,115 |
| Texas steers | 22,020 |
| Amounting to | £301,328 |

107 or a fraction over $1,500,000.00, or nearly three times as much as Munson's price, who has more than half as many cattle, half as many acres of land in fee, and twice as much range (referring to the portions Munson can extend his range) and equally as many horses and equipments and more miles of fence, and for one-third the price. I will assert without fear of contradiction that if you can buy Munson's ranch, as I have indicated you could, that within one year as to have just as much freehold land and equally as many cattle, horses, bulls, and other equipments and for the capital stock of the Cresswell Ranch and Cattle Company, or about one million dollars.

Moreover, I would like to say in making my subscription of $80,000.00 I would do so upon the understanding the property should be bought for the lowest cent. As I would have to pay mine in cash, I would wish to buy the property on the same basis.

I shall regret very much if you lose the opportunity of this ranch. I am reliably informed that Mr. Munson has been within a few points of closing the sale with American parties several times, and I have been fearful he would do so, but did not mention it to you for good reasons; besides, it is almost impossible to raise large amounts for anything in the U. S. Had I not known this, perhaps I should have written before. I will do anything I can to keep this deal along, knowing it is certain of success as a venture, and will lead to other matters greatly to our interest.

I am yours truly, W. N. EWING.

P. S.—Probably ere this you have seen Col. Stewart, who can more fully explain.

108 In this letter, as well as in all other communications received from him or from Mr. Coburn on the subject, the defendants represented themselves as acting as our agents in

the purchase. This letter was subsequently specially referred to in the telegram of 22nd December, 1884, instructing Mr. Ewing to purchase the property. On 5th December, 1884, Mr. Burnett, through whom our communications with the defendants chiefly passed, wrote to Mr. Ewing the letter of which the following is a copy:

Via Cork. LONDON, *5th December*, 1884.

W. N. Ewing, Esq., Messrs. Coburn & Ewing, Kansas City, Mo.

DEAR SIR: I have now to write especially in connection with your letter to me of the 22nd Oct., regarding the Munson ranch. Colonel Stewart has arrived, and all the party who are desirous of forming a company to buy this property are duly impressed with the desirability of acquiring it, and I enclose a prospectus of our proposed company, so that you can understand the basis on which we are proceeding. You cannot, I feet sure, understand the difficulty of inducing any one to invest money in anything American at present. The Cresswell is nominally carried through, but not by the public, but by the individually very large amounts which McKenzie's friends have invested in it.

We quite recognize how important it is, particularly with a man like Munson, that you should be able to pay him in cash, so as to reduce the price to the lowest possible point. You will notice we have based the price to be paid him for the property on your ideas as expressed in your letter of the 22nd Oct. We have now placed the company before the public and are in hopes that — will get the capital wanted, and in the event of our doing so I want you to be prepared when we ascertain the result for a cable, which we will send as soon after the 18th current as we can.

109 You will then be expected to make a very minute and fine bargain with Mr. Munson, allowing no point for dubiety and no loop-hole which may give rise to dispute, having everything in writing. Make the price as low as you possibly can and the terms of payment as distant as possible, as we have to take time to get the instalments on the money subscribed gathered in, and we have to get the debenture money, which we cannot advertise for until we proceed to allocate the shares. Let the various payments therefore be as protracted as possible; stipulate that a very sufficient margin shall be left unpaid until the cattle are all counted and the titles to the land certified as correct and the leases be found in order as described. As it is possible that we might not be able even to have the whole amount ready for payment on the specified dates, you must provide in the bargain for such a contingency, stipulating that we don't in such case forfeit any sums previously paid, and let any interest to be paid be as low as you possibly can, not exceeding, I should think, 6 per cent. Your own intelligence will suggest anything I have omitted to mention, and you will act as if the whole transaction was on your own account.

Yours truly, GEORGE BURNETT.

On the 6th December, 1884, Mr. Burnett wrote to Mr. Ewing the

letter of which the following is a copy, which copy he handed to me, the said Thomas Edwin Webb:

Via Cork. LONDON, 6 *December*, 1884.

W. N. Ewing, Esq., Kansas City Mo.

DEAR SIR: In writing you yesterday I omitted to say that the $25,000 which Munson is to allow for our expenses in floating the company will be simply deducted from the amount for which you purchased the ranch.

Yours truly, GEO. BURNETT.

Mr. T. E. Webb's registered cable address is Impulsive, which please use in any cable regarding the Cedar Valley Company.

In reference to the $25,000 referred to in the above letter and in Mr. Ewing's letters of 22nd October, 1884, and 8th January, 1885, which sum Mr. Munson was to be required to pay as "expenses of floating the company," we explain that the sum which was ultimately agreed with Mr. Munson that he should pay under this head and which he did pay or which was deducted from the total price payable to him was reduced to $17,500, and that the whole amount was credited to and received by the company, and that none of the directors or any other person received any portion thereof.

8. On the 22nd December, 1884, a board meeting was held at which we, the said Duncan Stewart and George Granville Campbell, Charles Stewart, and Thomas Edwin Webb, were present, together with the said George Burnett and the said George Dixon Fisher, and at the said meeting a resolution was passed to purchase the property.

The following is a copy of the minutes of the said board meeting:

MONDAY, *December 22nd*, 1884.

A meeting of the board of directors of the Cedar Valley Land and Cattle Company, L'd, was held on the above day at Morgate street chambers, London, E. C.

Present: Lieutenant Col. Stewart, in the chair; George Burnett, Esq., Lord George Campbell, G. D. Fisher, Esq.

It having been resolved to dispatch a cable message to Mr. W. N. Ewing, of Kansas City, Mo., under the telegraphic address of Coburn in reference to the purchase of the ranch, the following cable was sent to Mr. Coburn:

"Buy ranch, very lowest terms not exceeding sum mentioned your letter twenty-second October and conditions my letters fifth and sixth December. Cable Impulsive, London."

It having been resolved that the directors should proceed to allotment, it was decided that the letters of allotment should be sent out as soon as possible, and that a notice to that effect should be sent to the subscribers.

(Signed) DUNCAN STEWART.

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The cable message, of which the following is a copy, was dispatched on that day to Mr. Coburn:

22ND DECEMBER, 1884.

From Burnett, London, To Cockburn, Kansas City.

Buy ranch, very lowest terms not exceeding sum mentioned your letter twenty-second October and conditions my letters fifth and sixth December. Cable Impulsive, London.

(Signed) G. BURNETT,
*Morgate St. Chambers.*

The following is a copy of a further cable message, dated 23rd December, 1884, which was received from Mr. Ewing in reply:

23RD DEC., 1884.

From Coburn, Kansas City. To ——, Impulsive, London.

Letter fifth and cables received; to follow instructions requires not less than fifty nor more than one hundred thousand for first payment; can average remainder.

The following are copies of further telegrams despatched to or received from Messrs Coburn and Ewing in reference to the purchase of the ranch and of a letter addressed by me, the said
112 Thomas Edwin Webb, confirming the telegrams:

From Burnett, London, To Coburn, Kansas City.

Cabled you yesterday as Cockburn. Enquire.

24 DECEMBER, 1884.

From Burnett, London, To Coburn, Kansas City.

Money ready when bargain concluded.

(Signed) G. BURNETT.

MORGATE ST. CHAMBERS,
THE CEDAR VALLEY LAND AND CATTLE CO'Y,
*December 29th*, 1884.

DEAR SIRS: I have the pleasure to inform you that the capital subscribed here, in addition to the 3,200 shares agreed to be taken by you and the £5,000 to be allowed by the vendor, was sufficient to enable the directors to conclude the purchase of the ranch, the directors between them taking 3,100 shares.

I was therefore directed on the 22nd instant to cable you as follows:

"Buy ranch, very lowest terms not exceeding sum mentioned your letter twenty-second October and conditions my letters fifth and sixth December. Cable Impulsive, London."

Unfortunately the telegraph name was erroneously written "Cock-

burn" instead of Coburn, and therefore sent you on the 23rd instant *sent you* a second message, viz:

"Cabled you yesterday as Cockburn. Inquire."

On the 23rd instant your cable:

"Letter fifth and cables received; to follow instructions requires not less than fifty nor more than one hundred thousand for first payment; can arrange remainder.

was duly received, and the following day, by the instruc-
113 tions of the directors, I wired as follows:

"Money ready when bargain concluded."

and the directors are now waiting your further advices.

In the meantime I am instructed to send you the accompanying 6 prospectuses in order that you and your friends, if you wish to divide your subscription, may apply in the usual way for the shares to be taken on your side.

I shall be glad to receive the applications as soon as possible in order that the matter may be properly carried through the company's books and the shares regularly allotted, and so that the issue of debentures may not be delayed.

Yours faithfully,

(Signed) THOMAS E. WEBB, *Secretary.*

Messrs. Coburn and Ewing, Kansas City, Mo.

*Copy of Telegram, 29th December*, 1884.

From Webb, London, To Coburn, Kansas City, Mo.

Cabled Dallas; money required goes to-morrow. Tuesday. Paton. New York.

(Signed) THOMAS E. WEBB,
*Morgate Street Chambers.*

*Copy of Telegram, 29th December*, 1884.

From Burnett, London, To Coburn, Dallas, Texas.

Money required goes to-morrow Tuesday Paton New York.

(Signed) GEO. BURNETT,
*Morgate St. Chambers.*

*Copy of Telegram, 29th December*, 1884.

To ——, Impulsive, London:

114 Contract close price for cattle eighteen dollars fifty cents except bulls everything actually counted commencing May concluding August 1st horses and mules fifty dollars seventy-five thousand acres at two dollars all other property thrown in—payments one hundred thousand cash one hundred fifty thousand May

first when land must be deeded balance as cattle are counted allowing five per centum for remnant no forfeiture no interest if desired one hundred thousand will be carried one year six per centum all expenses building chutes and rounding cattle therein paid by him every point well guarded most favorable contract must have one hundred thousand in New York Monday Tuesday last day contract holds good—answer here.

COBURN.

29TH DECEMBER, 1884.

To ——, Impulsive, London:

Place money with Paton to credit our firm; have them notify Ewing here.

COBURN.

*Copy Telegram, 4th January*, 1885.

To ——, Impulsive, London:

Contract signed; money paid.

COBURN.

9. On the 31st December, 1884, I, the said Charles Stewart, in consequence of conversations which had passed between me and the board, wrote to the said George Burnett the letter of which the following is a copy:

57 COLEMAN STREET, LONDON, E. C., 31 *December*, 1884.

George Burnett, Esq., Cedar Valley Land & Cattle Co., L'd.

MY DEAR SIR: I have been asked in rather a pointed way
115 by two intending subscribers whether you have yourself any personal interest, direct or indirect, in Munson's sale of this property or in Mr. Ewing's prospective remuneration for the management. I have answered that I believe that you have no such interest whatever, but I shall be obliged if you will write me a letter stating how the fact stands, that I may give the answer on your own authority.

May I also state that you believe that Mr. Ewing has no commission on the sale or other interest in it beyond his interest as one of the purchasers?

I remain, my dear sir, yours faithfully,

CHARLES STEWART.

The following is a copy of the reply received from Mr. Burnett:

SEAFIELD COTTAGE, BROUGHTON FERRY, 2 *January*, 1885.

MY DEAR SIR: By some incomprehensible and unwarranted means your letters of the 30th and the 31st ulto., with a proof copy articles of association, have been sent to Glasgow and only reached me here to-day at 1 p. m.

I have already returned to Mr. Webb a proof copy of the articles.

In reply to your question on behalf of intending subscribers I have to say that I have no interest whatever in the sale of Munson's

property. I have never communicated with him on the subject, nor have I any interest whatever in Mr. Ewing's prospective remuneration for the management.

116 I know nothing more than you do about Ewing's bargain for the property. You have seen copies of the only letters I ever wrote him on the subject, and you have seen all the letters I ever received from him.

Yours truly, GEO. BURNETT.

I have understood, from what Lord George Campbell said at an early period of these negotiations, that not only would my expenses in connection with the Cresswell ranch as sent in to you be paid, but a sum would be allowed me for having brought the present property under the notice of the directors and the time and cost of being so much in London in connection with it.

The following is a copy of a letter from Mr. Ewing, dated 8th January, 1885, reporting the conclusion of the purchase:

8TH OF JANUARY, 1885.

MY DEAR SIR: Upon receipt of Mr. Burnett's letter of instructions of Dec. 5th and cable of the 23rd instant I proceeded to place myself in communication with Mr. Munson as soon as possible, and proceeded to Denison, Texas, where we met, got to work, and in 24 hours had struck a bargain and had a preliminary contract signed, sealed, and delivered.

I then went to Dallas to enable me to cable without risk of his finding out contents of my message, and upon receipt of yours placing the money to my credit N. Y. I had prepared in due form a final and detailed contract which was not in variance in any respect from the memoranda contract, but when presented to Mr. Munson he declined to sign it.

Perhaps a history of the trade would not be out of place. When I left Kansas City I left my cases behind me and threw every

117 effort of my mind to the consummation of this trade. I had figured it down to the lowest possible price and had every point which I wished to guard and protect noted down and in my mind, so that when we began the trade every point, so to speak, was in the hollow of my hand. The basis of the trade was agreed upon in writing, and no matter what price we should agree upon for the cattle, horses, and land it was understood.

1st. That he should actually count over the cattle and horses to me at his expense.

2nd. Furnish abstracts and original papers of entry to enable our attorney to examine titles; and

3rd. Draw contract so that the property might be sold for his benefit for any amount that might be due him, and the remainder, if any, to be paid to me.

4th. That a payment of $100,000.00 cash down should be made and the balance as the property was turned over; and

5th. All leases of land, improvements, fences, corrals, wagons, harness, outfit, and every kind of property belonging to and con-

nected with the ranch, except land, cattle, and horses, should be thrown in and no charge made for same.

6th. That a promotion fee of $25,000.00 should be rebated from the final payment to pay expenses of floating a company.

The trade was consummated on that basis, at $18.50 per head for all his cattle that he could count over on or before August 1st; $50.00 per head for all his horses and mules, and $2.00 per acre on all the land owned solely by him. Several other points were mentioned in the memoranda contract, all of which are fully embraced in detail in the final contract.

When this memoranda contract was signed and delivered I sent you the cable on the 28th inst., and upon receipt of your re-
118 ply I telegraphed Mr. Munson to come to Dallas, sign final contract, and receive his money.

The contract required nearly one day in its preparation and when handed to Mr. Munson for his signature he declined, stating that he did not so understand the preliminary agreement; that all his leased lands, fences, improvements, and other property — was worth more than $50,000.00 cash, being thrown in free of charge, should do away with the abating of the $25,000.00 clause, and that he so understood it and defied me to bring suit — got mad, and at one time the disagreement almost assumed a serious aspect. I told him I did not wish to sue him, but that when the time came I should certainly do so; that his contract was binding, and that I should hold it over him so long as I lived unless he would agree to carry it out, and that I would prevent his consummating a trade with any one else. You must realize that when $50,000.00 in property is not to be paid for and $25,000.00 more is to be deducted it actually cuts the price of his cattle down more than $3 per head, and, to use a Western phrase, it was "saiving him in two," and he had not the sand to do it, notwithstanding he would realize every cent he asked. He was so narrow-gauged in his ideas that he could not stand it to think that I should make a dollar out of the trade. He imagined that this promotion fee would inure to my personal benefit, and that I had pressed my advantage to a point beyond endurance. He entirely overlooked the fact that he had forced me to the necessity of securing every dollar before he would give us any chance to handle his property. However, after this I would have been very foolish not to have pressed my advantage. It was not only my duty, but
119 about the most pleasant "disagreeable" job I ever had on hand, and when you come to reflect upon the whole deal it was a little binding. For instance, the memoranda contract, as well as the final contract, provided:

1st. For the payment of $100,000.00 down (this was a great lever for me, which I did not hesitate to handle effectively), upon the receipt of which he was to deliver me a good and substantial bond for double that amount, to wit, $200,000.00, for the faithful performance of his contract in every detail.

2nd. That on May 1st, 1885, four months from this date, I should pay $2.00 per acre for his land, to which titles were approved, being only about 78,000 acres (he expected to buy 25,000 acres and turn it

in — an advance, of course), when deeds should be made upon payment of the money.

3rd. That contract should provide for no forfeiture of money paid, but for a sale of the entire property in case of default.

4th. That no interest should be paid on deferred payments (I argued I was ready to pay every dollar now, and it was his misfortune that he was unable to deliver his property at once). This position necessarily gave me better terms than I could have in reason asked.

5th. That he should pay all the expenses of maintaining the ranch until Aug. 1st in the rounding up and delivering of the cattle (another one of his misfortunes I could not prevent), except such expenses as my interests demanded.

6th. That I should have 25 horses and 4 mules at any time I demanded same to enable me to brand and handle cattle delivered, and thereby saving me the expense of buying a mount for this purpose.

7th. That the cattle should be actually counted out at the
120 low price of $18.50 per head and the horses and mules at $50.00 per head. However, in order to get something as an equivalent for the amount of the first payment made, he was to deliver me cattle at $9.25 per head until he had virtually delivered me 10,810 head or $200,000.00 worth for $100,000.00, which amount was to bear no interest (another of his misfortunes).

8th. That care should be exercised in the use and handling of both cattle and horses in the delivery of same.

9th. That he should give me 12 months' time for the last $100,000.00 payment of the purchase-money at 6 per cent., if desired.

10th. To guarantee the range free from all nesters, squatters, and other trespassers.

11th. To agree for an arbitration of any misunderstanding that might arise and avoid delay.

12th. To hold lease for us in case lessor would not consent to the transfer or assignment of same to us.

14th. That he would deliver to us all his other property of every nature, including a lease of 179,000 acres of land at 1½ cent per acre per annum, 70 miles of fence, corrals, outfits, &c., free of charge, and, lastly, to add that he should abate $25,000.00 from the amount of these starvation prices and conditions. It was pressing things to a degree of rigid unpleasantness. Such, however, was the terms of the trade upon which we had agreed. I had represented to you the trade was closed, and requested the money to be placed at my command in N. Y., all of which had been done, and I had taken every precaution to reduce everything to writing and in detail. Nevertheless he refused to confirm the original bargain with his signature. He said there was no law in Texas to hang a man for backing out
of a bad bargain. Such was my unpleasant situation. I had
121 gone to Texas to buy this property and was neither looking for a fight nor a lawsuit, both of which might result in my favor in the end, but the point was to buy the ranch. Now, to have cabled you the situation would have placed me in a situation I

could scarcely have explained as I now write it, and to let the price go by might be an opportunity lost forever.

What was best to be done? was the important question, and I was not long in making up my mind that it was "to act," and I decided to conclude this bargain on the best terms I could, guided by good and safe judgment and the protection of your interest in every particular. I was compelled to agree, after four days of continued discussion, to compromise with him for a promotion fee of $17,500.00 instead of $25,000.00. This is the only instance in which your instructions have not been fully and faithfully carried out. However, many safeguards around your interest not suggested by you must certainly be perceptible to your own sagacity and practical views. I submit the contract to you as an entirety which alone must speak for itself, and it is open for criticism.

The points conceded by me, by reference to contract, are:

1st. I am not allowed to use or run any branding iron on the range, only at the chutes, until after August 1st, 1885. You will see the justice of this, as Mr. Munson remarked, "The contract is assignable," and should it fall into the hands of unscrupulous parties it might be used greatly to his disadvantage.

2nd. In the counting of his cattle 5 per cent. was allowed as a reasonable remnant. He has only three months in which to deliver, and I don't believe it possible for him to gather 95 per cent. of his cattle in that time.

3rd. I was almost forced to concede the point to pay him $60 per head for 75 per cent. of his bulls, but in doing so I dare say
122 a greater point was gained by me. ¾ of his bulls are thoroughbred and Kentucky grades and actually cost more than the price paid.

4th. The contract assumed for the building of about 47 miles of fence which was under headway already. It is work that is recommended in a former communication and greatly enlarges and extends the range and should, by all means, be built before spring.

5th. Under the terms of the contract he will be allowed to brand and turn over, say, one-half of this year's calves, and, while this is quite an item, you must not overlook the fact that he gets no interest on the amounts to be paid him from time to time until Aug. 1st; that he virtually pays all expenses of running and maintaining the ranch for ⅔ of the year. By compelling him to count out his cattle he virtually insures their lives during the winter and until delivered, and as soon as the last delivery is made we will have about as many beeves ready for market as are calves branded, which should bring $75,000.00. That only costs $18.50 per head, while the actual value of the calves themselves are not far from the price paid.

I do not recall any further points, anyway, in his favor. However, I should have more horses to attend to and care for the cattle as they are turned over, say 50 or 60 head, but Mr. Munson would not agree to this and claimed that he would be short of horses in view of the work to be done.

We should also have 250 more bulls—that is to say, every Texas

bull (amounting to about 100) should be castrated and replaced with good Kentucky-grade bulls and an additional 150 added.

In conclusion I must say I see no reason why the stock of
123 our company does not compare quite favorably with other companies who have paid from $27.50 to $30.00 per head and other points as loosely guarded. If the stock of these companies remain at par I don't see why ours should not soon be at a handsome premium.

I herewith inclose—

One of the original contracts signed in duplicate.

Letter of Gage, Ladd & Small in reference thereto.

Copy of bond.

Copy of contract for promotion fee.

Copy of receipt for cash payment.

Copy of declaration of trust signed by me upon the receipt and payment of the first amount; and trust that they may not only meet with your favor and approval in every particular, but also with your generous appreciation.

Awaiting your further orders and wishes, I am, dear sir,

Very truly yours, W. N. EWING.

To Thomas E. Webb, Esq., sec'y the Cedar Valley Land & Cattle Co., Limited, Morgate street chambers, Morgate street, London, England.

The following is a copy of the contract which was inclosed in the above letter from Mr. Ewing:

This instrument witnesseth a contract between W. B. Munson, of Grayson county, Texas, and W. N. Ewing, of Kansas City, Missouri, by the terms of which it is agreed:

I.

That the said W. B. Munson has this day bargained and sold unto the said W. N. Ewing, for the consideration hereinafter
124 stated:

1st. About seventy-five thousand (75,000) acres of land in Randall and Deaf Smith counties, in the State of Texas, being all the lands now claimed or owned solely by the said Munson in the said counties connected with or appertaining to the said Munson's Paloduro ranch, in said Randall and Deaf Smith counties, to be more particularly described by a schedule to be annexed hereto, marked "A."

2nd. All the cattle owned by said W. B. Munson on the ranch aforesaid and in the Dixon Creek pasture (in Carson and Hutchinson counties), the same to include all the cattle now owned and claimed by said Munson not branded or in the following brands, viz., Crescent G., T. Anchor, G. M. S., E. O., with bar and without, and all now on the ranch and pasture aforesaid, or that may, before Aug. 1st, 1885, be on said ranch and belonging to said Munson.

3rd. All the horses and mules owned by the said W. B. Munson on the said Paloduro and Dixon Creek ranches.

4th. All range and ranch rights now owned and enjoyed by said W. B. Munson in connection with said Paloduro ranch, all the lease of lands held by said Munson connected with or appertaining to the said ranch, all wagons, harness, branding irons, blacksmith and carpenter tools, furniture and property of every description owned and used by said Munson in connection with said ranch. An inventory not to be exclusive of items omitted but properly embraced in the above description will be appended hereto as Exhibit "B."

II.

1st. That said W. B. Munson shall, on or before May 1st, 1885, present to said Ewing's attorneys, in Kansas City, Missouri, duly certified or original evidences of the titles to the lands hereinbefore mentioned, and shall make to the said W. N. Ewing good
125 and sufficient deeds, with covenants of good right to convey in fee, of warranty of title and freedom from all and all manner of incumbrances (save taxes for the year 1885), to be subject to the provisions of this contract, to such of said lands as the attorneys aforesaid shall determine the said W. B. Munson owns in fee by title clear and unincumbered, and to make similar deeds to such of said lands as said Munson, within sixty days after said May 1st, 1885, shall, in the opinion of the attorneys aforesaid, upon evidences of title furnished by said Munson as aforesaid, have perfected his title to.

2nd. That said Munson shall, from May 1st, 1885, to Aug. 1st, 1885, at his own proper expense and charges, gather and deliver to said Ewing, at said Paloduro ranch, the cattle aforesaid in pens and chutes prepared by said Munson at his own cost and expense; that the said Munson shall make all proper preparations for the counting and actual delivery of said cattle, and until so actually delivered all expense of gathering, penning, keeping, and feeding said cattle shall be borne by said Munson, except as hereinafter provided; that said delivery may commence at any date after May 1st, 1885, and may continue from time to time until August 1st, 1885, as said cattle are gathered. It is understood, however, between said parties that this sale includes all the cattle at the places and in the brands described in paragraph I hereof, whether gathered, counted, and actually delivered or not.

3rd. The horses and mules aforesaid shall be delivered by said Munson between said May 1st, 1885, and Aug. 1st, 1885, at the said Paloduro ranch, at such times and in such numbers as the said Munson may desire, except twenty-five (25) head of horses and two spans of mules, to be an average of all in use on said ranch, which the said Munson shall deliver, when and as demanded by said Ewing, on the ranch aforesaid.

126 4th. The said Munson shall deliver to said Ewing possession of all the other property hereby sold not embraced in the three preceding subdivisions of this paragraph on or before Aug. 1st, 1885.

5th. On the day of the execution of this contract the said Munson shall make and deliver to the said W. N. Ewing a bond, with sure-

ties to be approved by the said Ewing, in the sum of two hundred thousand (200,000) dollars, conditioned for the faithful and prompt performance upon his part of all the stipulations of this contract and for the payment of all such damages as may be sustained by said W. N. Ewing, his heirs or assigns, for or on account of any delay or failure of performance of this contract in all its details by the said Munson.

III.

That the said W. N. Ewing, in consideration of the foregoing, has agreed:

1st. At the execution of this instrument to pay the said Munson the sum of one hundred thousand dollars in cash.

2nd. At the execution of the deeds provided for in the 1st subdivision of paragraph II hereof to pay the said Munson the sum of two dollars per acre, in cash, for the lands described and conveyed by such instruments.

3rd. After the delivery of thirty-five hundred head of cattle, bulls excepted, and thereafter as that number are delivered until two hundred thousand dollars' worth at the rate of eighteen (18) and $\frac{50}{100}$ dollars per head, to pay in installments for said deliveries up to said sum — of nine (9) and $\frac{25}{100}$ dollars per head; and after delivery of said two hundred thousand (200,000) dollars' worth, then, as deliveries are made and aggregate thirty-five hundred head, to pay the sum of eighteen (18) and $\frac{50}{100}$ dollars per head; and to pay for said bulls (over one year old), as delivered, at the
127 rate of eighteen (18) and $\frac{50}{100}$ dollars per head from the beginning, and for each of three of every four bulls delivered the additional sum of forty-one and $\frac{50}{100}$ dollars, seventy-five per cent. of said bulls being delivered at the rate or price of sixty dollars per head.

4th. To pay to said Munson, as delivered, the sum of fifty dollars per head for all horses and mules delivered pursuant to subdivision (3) three of paragraph II hereof.

5th. To pay to said W. B. Munson, on Aug. 1st, 1885, five per cent upon the sum of the value of all cattle delivered by him up to that date, estimating the same at the rate of eighteen and $\frac{50}{100}$ dollars per head, as the consideration in full of cattle sold hereby and not gathered and delivered, and in addition five per centum upon seventy-five per cent. of the bulls delivered, at the rate of forty-one (41) and $\frac{50}{100}$ dollars.

IV.

1st. That the said W. B. Munson, in gathering and keeping the cattle hereinbefore provided to be delivered, shall, by himself and his employees, use care and diligence to prevent any injury to or abuse of said cattle; that the cattle delivered and received by said Ewing shall be free from injury caused by improper handling in gathering and keeping the same; and the horses and mules to be delivered under this contract shall be in good condition and free from injury or damage on account of hard use or rough handling

between this date and the date of delivery. Injury or damage caused by reasonable use in rounding up cattle shall not be included in this provision. "Good condition," as understood above, means such condition as may result from reasonable care and use in view of the work to be done under this contract.

2nd. That the said Ewing shall not, until Aug. 1st, 1885, use any branding iron or brand any cattle or horses on the ranch
128 purchased hereby, except those horses and cattle actually delivered to him, and as to them only at the delivery; nor shall said Ewing, until the date aforesaid, have any right to work with or among the said cattle, except those delivered at said delivery pens, and only at said pens.

V.

That all payments herein provided to be made by said Ewing to said Munson may be made at the Traders' Bank, Kansas City, Missouri, or in the city of New York, as the said Munson may elect.

VI.

That the said W. N. Ewing, at his election, may make the last payment, aggregating the sum of one hundred thousand dollars, or any less sum as he may determine, for and upon the cattle herein contracted to be delivered, twelve months after Jan. 1st, 1885, provided such sum, the payment whereof shall be thus deferred, shall bear interest from said Jan. 1st, 1885, at the rate of six (6) per cent. per annum, and shall be evidenced by the note of said W. N. Ewing and secured by a lien on all the property herein sold by said Munson to said Ewing.

VII.

That if the said W. N. Ewing shall fail to perform his obligations under this contract on or before Aug. 1st, 1885, then the sums that may have been paid by him hereunder shall not be forfeited; but at any time after Aug. 1st, 1885, R. H. Rue, of Sherman, Texas; or if he should fail to act from any cause, then Charles Goodnight, of Armstrong county, Texas; or if he should fail from any causes to act, then the then acting sheriff of Dallas county, Texas, or any of his deputies, at or upon the request of either party thereto, shall be authorized, after three months' advertisement in three daily papers in the State of Texas—one at Dallas, one at Galveston, and one at San Antonio—to sell all the property herein conveyed and de-
129 scribed as an entirety to the highest bidder, for cash, at the court-house door, in the city of Dallas, Texas, and make conveyance and bills of sale thereof valid in law and binding the parties hereto and their assigns and receive and receipt for the purchase-money, and apply the same, first, to the payment of all expenses of sale, including advertisements, auctioneer's fees, a reasonable sum to said Rue, Goodnight, or sheriff, as the case may be, not to exceed one thousand dollars; second, to the payment of the sums that may remain due the said Munson, and, lastly, the remainder shall be paid to the said Ewing.

In determining the amount due said Munson under this contract, if this provision is to be executed, the count of cattle and horses and mules which said Munson may have made before said Aug. 1st, 1885, stated by him in writing and signed, shall be considered and estimated as the number of said cattle, horses, and mules sold under this contract by the said Munson to the said Ewing, and the prices as fixed in this contract shall be used in making the estimate, and if the lands have not been conveyed and paid for as hereinbefore provided the amount due by said Ewing for land shall be two (2) dollars per acre for all lands embraced herein, the titles to which may be, in the written opinion of some competent attorney, *be* considered good and perfect in the said W. B. Munson, and from the whole sum thus found to be due for land, cattle, horses, and mules there shall be deducted all payments made by said Ewing under this contract, and the remainder, with interest at the rate of six (6) per cent. per annum from June 1st, 1885, shall be the sum due said Munson. The said Munson shall have the right in common with all others to bid for said property, and, if his is the highest bid, to become the purchaser, and the amount received by said Munson from said sale shall be in full satisfaction of all de-
130 mands on said Ewing growing out of this contract in any form whatsoever.

VIII.

That the said W. B. Munson warrants unto the said W. N. Ewing and his assigns that there are now no squatters, nesters, or other trespassers upon the lands to be conveyed to said Ewing or upon the lands held by said Munson under lease transferred herein to said Ewing; that ranch and range, the rights and privileges whereof have been this day sold by said Munson to said Ewing, are free from all other located brands and stocks of cattle than those sold hereby to said Ewing, and that all the property hereby sold said Ewing shall at the delivery thereof hereinbefore provided be free from all encumbrances, and the right and title thereto passing by this instrument shall be entire and perfect and absolute and free from all liens and claims whatsoever, whether created by statute, common law, equity, or contract or by any or all of them combined, and that there are no cattle in the brands described herein in the Pan Handle of Texas except such as are hereby conveyed, and the title to all in said brands in said territory is warranted.

IX.

That said Munson is to pay all taxes and rents accruing upon all the property embraced in this contract up to Jan. 1st, 1885, and all taxes and rents thereafter are to be paid by said W. N. Ewing; that said Ewing shall fulfill the obligations of said Munson under a contract for the construction and removal of about 47 miles of fence on said Paladuro ranch, now in process of execution, and hold the said Munson harmless from any liability on account of said contract, provided the said Ewing shall not be required to pay on such contract more than the sum of nine thousand (9,000) dollars; that

131 the said W. B. Munson is to furnish board and all expenses for all the men employed by himself in gathering and delivering said cattle and for all the men employed by said Ewing for receiving and holding the cattle when delivered, and the said Ewing is to pay for the board and expenses of the men employed by him at the rate of fifteen (15) dollars per month, and is to pay their wages and also the wages of five men, to be under the direction of said Munson or his boss, in keeping the delivered and undelivered cattle separated, it being understood that all the expenses of said ranch and men up to Aug. 1st, 1885, are to be paid and borne by said W. B. Munson except the wages and board above provided to be paid by said Ewing from May 1st to Aug. 1st, 1885

X.

That in the event of any disagreement between the parties hereto or their assigns respecting the rights, obligations, liabilities, or duties of either under this contract or growing out of any breach or supposed breach by either, such disagreement or controversy shall be settled by the arbitrament of two disinterested persons, one to be selected by each party, or if they fail to agree then by the award of one of such arbitrators concurred in by an umpire to be selected by the such arbitrators, said arbitrators to hear the statement of said parties, examining this contract, and hear such other evidence as they may deem relevant and proper at such sitting or sittings as they may appoint; and the said arbitrators may, at their discretion, agree upon the umpire in advance to sit with them in the hearing of said controversy, or they may appoint him after such hearing and after they have failed to agree, and in that event the said controversy can be determined by him and said arbitrators upon the said arbitrators' statements of the evidence and
132 his agreement with one of said arbitrators in an award; and the award of said arbitrators, if they agree, or if they disagree then the award of one of said arbitrators and the umpire, reduced to writing and signed by them and delivered in duplicate to each of the parties, shall be considered and treated in all courts as the agreement of settlement between said parties of all matters embraced in said award, and as such agreement and settlement shall be provable and enforceable in all courts having jurisdiction, and neither party shall have any cause of action in any court growing out of the breach of the other of any provision of this contract until in good faith he has made an honest effort to have the matter complained of arbitrated under the terms of this paragraph. This paragraph embraces liability, except upon the bond to be given by said Munson, as hereinbefore provided, upon all other rights and liabilities incident to this contract.

XI.

1st. That if the lessor of the lands held by said Munson should not consent for the assignment of said lease, as provided for in subdivision 4 of paragraph I hereof, then the said lease shall be held by said Munson as now, for the use and benefit, however, of

said Ewing or his assigns, and the said Ewing or his assigns shall pay the rent and charges on said lease required by the terms thereof to be paid by said Munson after Jan. 1st, 1885.

2nd. That said Munson shall not deliver under this contract any cattle purchased from other parties after this date or put upon said ranch or pasture cattle to be delivered under this contract brought from other cattles belonging to him or obtained by him from other persons.

XII.

In evidence whereof the parties hereto have affixed their names to this and a triplicate original hereof this December the
133 31st 1884.

W. B. MUNSON.
W. N. EWING.

Witness:
[SEAL.] WM. G. MEGINNIS.

SCHEDULE A.

Surveys Nos. 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, 35, 37, 39, 41, 43, 45, 47, 49, 51, 53, 55, 57, 59, & 61, in block No. 1, originally granted to the Tyler Pass R. R. Co.

Surveys Nos. 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, 35, 37, 39, 41, 43, 45, 47, 49, 51, 53, 55, 57, 59, 61, in block K 14.

Surveys 31, 33, 35, and '7, in block 22.

Surveys Nos. 1, 3, 5, 33, 35, 37, 39, 41, 69, 71, 73, 75, 77, 105, 107, 109, part of survey 111, and all of surveys 143, 145, in block M G, and

Surveys Nos. 143, 179, 183, 231, and the E. ½ of sur. 149, in block No. 2.

And survey No. 51, in block No. 7.

Also surveys Nos. 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, in block No 3, and

Surveys Nos. 5, 7, 9, 11, & 15, in block K 3.

Survey No. 17, in block 8.

EXHIBIT B.

*List of Personal Property.*

One set of blacksmith tools.
One buggy.
Five wagons.
Sundry axes, spades, shovels, wire-stretchers.
Harness.
One mower.
One rake.
One bedstead.
Two stoves.
134 " Bureau."
All chairs, tables, dishes, cooking outfits, camp furniture, and guns.

This list is not exclusive of other furniture and property passing by the contract.

The following is a copy of the letter from Messrs. Gage, Ladd & Small, which was also enclosed in the above letter from Mr. Ewing:

KANSAS CITY, MO., *January 8th*, 1885.

W. N. Ewing, Esq.

DEAR SIR: As requested by you, we have examined your contract with W. B. Munson for the purchase of the Palo Duro ranch, in Texas, as well as the bond given by Munson and his securities for the performance of that contract, and the obligation entered into by Munson to pay you $17,500.00 as (you inform us) "promoter's fee." In our opinion these instruments are legal and binding under the laws of Texas, and the provisions of the contract are well calculated to protect and insure you of possession and title to the property at the time you are to pay for it according to the terms of the contract.

Truly yours,
(S'g'd) GAGE, LADD & SMALL.

The following is a copy of the bond which was also enclosed in the above letter from Mr. Ewing:

This instrument witnesseth the obligation of W. B. Munson, as principal, and Job Gunter, J. T. Munson, and C. C. Jones, as sureties, to pay to W. N. Ewing, of Kansas City, Missouri, the sum of two hundred thousand ($200,000.00), to be void if the said W. B. Munson shall faithfully and promptly perform upon his part all the stipulations contained in a certain contract between said W. B. Munson and said W. N. Ewing, made this day in writing, and by
which the said Munson has contracted to sell to said Ewing
135 certain lands, cattle, &c., therein mentioned, and to perform
other matters therein set forth, and shall pay all such damages as may be sustained by said W. N. Ewing, his heirs or assigns, for or on account of any delay or failure of performance of the said contract in all its details by the said W. B. Munson; and this obligation shall inure to the benefit of any assignee of the contract above referred to with like effect as if payable directly to any such assignee.

Witness our hands this December 31st, 1884.

(S'g'd) W. B. MUNSON.
JOB GUNTER.
J. T. MUNSON.
C. C. JONES.

I, Joseph Bledsoe, president of the City Bank of Sherman, Texas, do hereby certify that I consider the bondsmen whose names are signed to the bond hereto attached good for the sum of seven hundred thousand dollars.

Witness my hand and the seal of said bank this first day of January, 1885.

[SEAL.] (S'g'd) JOSEPH BLEDSOE, *President.*

I regard this bond made by W. B. Munson, Job Gunter, C. C. Jones, and J. T. Munson as amply good and collectible.

[SEAL.] TOM RANDOLPH,
*Cash'r M. & P. National Bank, Sherman, Texas.*

The following is a copy of the contract for promotion fee, which was also inclosed in the above letter from Mr. Ewing:

This instrument witnesseth the obligation of W. B. Munson to deduct the sum of seventeen thousand five hundred (17,500) dollars from the amount required to be paid by W. N. Ewing to said
136 Munson under the terms of a contract this day made between said Munson and said Ewing for the sale by the former to the latter of certain lands, cattle, &c., said sum to be withheld by said Ewing or reserved from the amount to be paid on final settlement of said contract, but if credit is given under said contract for any portion of the monies to be paid thereunder as therein provided the deduction here provided for is to be from the money payments and not from the sum for which credit may be given. This December 31st, 1884.

W. B. MUNSON.

The following is a copy of the receipt, which was also enclosed in the above letter from Mr. Ewing:

JANUARY 3RD, 1885.

Received of W. N. Ewing the sum of one hundred thousand dollars as the cash payment mentioned in a certain contract dated December 31st, 1884, for my Palo Duro ranch, in Randall & Deaf Smith counties, Texas.

(S'g'd) W. B. MUNSON.

The following is a copy of the declaration of trust, which was also enclosed in the above letter from Mr. Ewing:

This instrument witnesseth that the sum of one hundred thousand dollars provided to be paid by me to W. B. Munson, in cash, upon the execution of a contract between me and the said W. B. Munson, this day drawn up, by which the said Munson contracts to sell to me certain lands & cattle, &c., therein described, belongs to and is the property of the Cedar Valley Land and Cattle Company, and this declaration of trust is made by me for the protection of said company in the event of my death or other accident to me before the intents of me and the company shall be declared and made known by proper writings between us.

Witness my hand this December 31, 1884.

(S'g'd) W. N. EWING.

Hereunto set in the presence of—

137 & 138 The following is a copy of the letter from Messrs. Robertson & Coke, & Dallas, which was also enclosed in the above letter from Mr. Ewing:

DALLAS, TEXAS, *Jan. 1st*, 1885.

Mr. W. N. Ewing, present:

We hand you herewith, 1st, an original pen copy of the contract drawn up by us between you and W. B. Munson; 2nd, a type-written copy of said copy, and, 3rd, a type-written carbon copy of said contract.

In preparing the contract we have endeavored to express with perspicuity the terms of the agreement between you and Mr. Munson, as directly communicated to us by both of you in the presence of each other.

It is our opinion that under the contract as written you are amply protected from all payments, except for land, that you get a good title to, as may be judged by your attorneys, and for cattle and horses actually delivered and five per cent. more as provided for; and that the contract as drawn is susceptible of no fair interpretation variant from your & Mr. Munson's meaning as expressed by you and him, and that you are fully protected from bad titles, false counts, improper reservations of chattels purchased and intended to be sold by Mr. Munson to you, & from all devices to thwart the plain letter of the instrument as far as this can be done by contract. If the contract is carried out by both parties in good faith you will get all you proposed to buy and at the price you proposed to pay, and Munson will have sold all he proposed to sell and receive all the consideration he proposed to accept.

If should you disagree as to the proper meaning of the
139 contract, which we believe is quite improbable, as every paragraph has been read & considered separately and fully by both you and Mr. Munson, the instrument provides a fair arbitrament of the controversy and you are secured against failures and delays by Mr. Munson by his bond provided for. Our fee for the preparation of the contract and for advice given with respect to it and the transaction it evidences is the sum of five hundred ($500) dollars.

Very respectfully,
(S'g'd) ROBERTSON & COKE.

In the month of January, 1885, the defendant, James M. Coburn, came to London and we had several meetings with him and long interviews in reference to the purchase of the property. In all of these interviews Mr. Coburn spoke of himself and his firm as acting for the company in the purchase, and he studiously concealed from us the fact that he or his partner were receiving any commission from Mr. Munson in connection with the transaction. He repeatedly stated that he was sure that the property had been bought at the lowest possible price. We had a good deal of conversation with him as to the amount of remuneration which his firm or Mr. Ewing were to receive from the company, but it was agreed that the fina

settlement of this point should stand over until Mr. Ewing came to London.

12. In the end of the following month, viz., February, 1885, Mr. Ewing arrived in London. We had frequent interviews with him, separately or collectively, and discussed with him at great length the conditions of the purchase and the price paid. Mr. Ewing always assured us that the property had been bought at the lowest possible price, and he studiously concealed from us the fact of his having received any commission or payment whatsoever
140 from Mr. Munson. The terms of Mr. Ewing's remuneration were also fully discussed, and, as Mr. Ewing urged that he had been at work for the company for some time past in settling the conditions of purchase from Mr. Munson, it was agreed that his salary should commence from January 1st, 1885, notwithstanding that his actual work as manager would not commence till the month of May in that year, at which date the delivery by Mr. Munson was to commence. We also understood and believed that Mr. Ewing and Mr. Coburn were looking for their remuneration for their trouble in settling the terms of the purchase in the fact of their receiving the appointment of managers of the company for a period of 5 years, which appointment was accordingly given to a partner in their firm.

In the month of June, 1885, the directors issued a prospectus of the debentures which were being issued by the company, in which it was again stated that no promotion money in any shape was or would be paid. A copy of the said debenture prospectus is produced herewith and marked B. Copies of the said debenture prospectus were sent to the defendants, and they made no objection to or observation on its terms.

It was not until the month of August, 1885, that we discovered, from information received from our colleague, the said George Dixon Fisher, that the defendants had received a commission or payment from Mr. Munson on the sale of the property, and on receiving such information we immediately claimed repayment of the said amount from them.

[SEAL.] DUNCAN STEWART.
CHARLES STEWART.
THOMAS E. WEBB.

Sworn by Duncan Stewart, Charles Stewart, and Thomas Edwin Webb before me this 10th day of November, 1885.

F. C. PENFIELD,
*Vice and Deputy Consul General.*

141 [SEAL.] THOS. A. F. KINGSCOTE.
JAMES GRAHAM.

Sworn to by Thomas Arthur Fitzhardinge Kingscote and James Graham before me this 10th day of November, 1885.

[SEAL.] F. C. PENFIELD,
*Vice and Deputy Consul General.*

GEORGE G. CAMPBELL.

Sworn at the consulate of the United States, in Dublin, Ireland, by George G. Campbell, this 13th day of November, 1885.

[SEAL.] B. H. BORROWS,
*U. S. Consul.*

142 The list of applications will close on Thursday, 18th December.

The Cedar Valley Land and Cattle Company, Limited, to be incorporated under the companies acts, 1862 to 1882; capital, £120,000, in shares of £10 each (with power to increase).

Upwards of half of the necessary capital is already subscribed privately in this country and America.

It is proposed to call up £5 per share and to raise the balance on debentures—

£1 per share to be paid on application;
£1 on allotment;
£1 on 1st February, 1885;
£1 on 15th March, and
£1 on 15th April;

Or calls may be paid in advance at any of the above dates under discount at the rate of 5 per cent. per annum.

It is intended to apply for a quotation of the shares on the London Stock Exchange.

Directors.

Lieut. Col. D. Stewart (chairman Western Mortgage and Investment Company, Limited), Fairlie House, Kilmarnock, N. B.

Lord George G. Campbell (director Western Land and Cattle Company, Limited), 2 Bryanston Square, London, W.

G. Burnett, Esq., Dundee (director Hansford Land and Cattle Company, Limited).

143 James Graham, Esq. (director Western Mortgage and Investment Company, Limited), 39 Ennismore Gardens, London, S. W.

T. Kingscote, Esq. (director Scottish Amicable Life Assurance Society), 59 St. James street, London, S. W.

Bankers.

Messrs. Fuller, Banbury, Nix & Co., 77 Lombard street, London, E. C.

The Clydesdale Bank, Glasgow, Edinburgh, and branches.

Solicitors.

Messrs. Markby, Stewart & Co., 57 Coleman street, London, E. C.

Secretary.

Mr. Thomas E. Webb.

Brokers.

Messrs. Egerton Jones, Simpson & Co., 3 Coptall buildings, London, E. C.

Messrs. Robertson & Co., 31 George street, Edinburgh.

Office.

Morgate street chambers, Morgate street, London.

*Prospectus.*

This company is formed for the purpose of carrying on the business of cattle-ranching in the United States of America.

A provisional agreement has been made for the purchase of lands, leases, cattle, and other property, situated principally in Randall county, in the Pan Handle of the State of Texas.

The property consists of about 20,000 head of cattle, 200 horses and mules, about 75,000 acres of land in freehold, with the option of 25,000 more in fee, with water rights; about 179,200 acres of land, under a seven-years' lease at 1½ cents per annum, together with very extensive range rights, and all fencing, houses, corrals, outfits, and improvements,

144 One of the directors, who has large experience in the management and valuation of cattle ranches, has recently visited a portion of the property and satisfied himself of its value; but reference is made particularly to the report (which accompanies this prospectus) by Mr. W. N. Ewing, of Kansas City, Mo., a gentleman well known for his extensive experience of cattle and land in the Western States of America, and with whom two of the directors have recently had personal communications on the subject.

There are about 75 miles of excellent fencing on the property. There is abundance of water over a large portion of the range, and the grass is excellent and the winter shelter very good.

It is intended to work the property as a breeding ranch, selling the year-olds. The cows now on the ranch are particularly well adapted for this purpose, and the percentage of increase on this and the immediately joining ranches is fully equal to any in Texas. To increase the breeding stock it is intended to purchase about 7,000 additional cows.

There are not now nor have there ever been any small herds of cattle on the range belonging to other persons than the present proprietor.

The range is capable of running a large increase over the number of cattle now on it.

The losses of cattle during the past three years has not exceeded 1½ per cent., while the increase from the number of cows over two years old has amounted on this and an adjoining ranch to over 90 per cent.

Mr. Ewing estimates that the expense of running the ranch will not exceed 65 to 75 cents per head per annum.

The cost of the herd will not exceed twenty dollars per head.

145 The purchase price of cattle, lands, range and water rights,

leases, fencing, and all implements and improvements will be about 550,000 dols., and the cattle will be counted over and the titles to the land verified previous to the final payment of the purchase-money.

The directors and their friends will hold a very substantial interest in the company, as will also some parties in America who personally know its value.

The business of cattle-ranching is now so generally understood and the profits capable of being derived from it so well known that it is not considered necessary to comment on the subject. It is intended to place the company's business under the local management of a gentleman whose experience and discretion in such business is well known and has been well tested, and who has consented to act in that capacity and to invest a large sum in the company's shares. Most of the directors of the company have had experience in the business, and there seems no reason to doubt that considerable profits will be made, from the exceptionally favorable circumstances connected with this property and the low price at which it will be acquired, in consequence of the present commercial depression in America and of the payment of the full price in cash. The directors have shown their confidence in the value of the property by personally undertaking the responsibility for all the preliminary expenses of the company, without any consideration, present or future, beyond simple repayment of the amount actually expended. No promotion money in any shape has been or will be paid.

If no allotment is made the amount paid, on application, will be returned in full.

Application forms and copies of the prospectus, with Mr. Ewing's report, may be obtained of the secretary, and reports and other original documents may be inspected at the office of the
146 company or their solicitors.

Applications for shares to be sent to the company's bankers either in London or Scotland.

December, 1884.

This is the exhibit, marked A, referred to in the affidavits of Duncan Stewart, Charles Stewart, and Thomas Edwin Webb, sworn before me this 6th day of November, 1885.

F. C. PENFIELD,
*Vice and Deputy Consul General.*

This is the exhibit, marked A, referred to in the affidavits of Thomas Arthur Fitzhardinge Kingscote and James Graham, sworn before me this 10th day of November, 1885.

F. C. PENFIELD,
*Vice and Deputy Consul General.*

This is the exhibit, marked A, referred to in the affidavit of George Granville Campbell, sworn before me this 13th day of November, 1885.

B. H. BORROWS, *U. S. Consul.*

## Cedar Valley Land & Cattle Co., Limited.

A.

*Prospectus.*

Memorandum of association.

I. The name of the company is "The Cedar Valley Land and Cattle Company, Limited."

II. The registered office of the company will be situate in England.

III. The objects for which the company is established are:

(1.) To buy, breed, graze, produce, and sell cattle, sheep, hogs, horses, and other live stock or agricultural produce in the United States of America and elsewhere.

147 (2.) To acquire by purchase or lease or otherwise land or other real estate in the United States of America and elsewhere, and to sell or lease the same.

(3.) To manage and develop any real estate so acquired, and to aid in schemes for colonization and settlements by promoting emigration and settlement in every way thought advisable.

(4.) To aid in the formation of companies for the purchase, sale, improvement, and development of land and other properties, and to promote and support industrial and other enterprises connected with the purchase, sale, improvement, and development of the property and interests of the company.

(5.) To borrow or lend money for the general purposes of the company, and to receive money on deposit or debenture, and to make, accept, endorse, and execute promissory notes, bills of exchange, and other negotiable instruments.

(6.) To purchase or acquire the business or undertaking of the company having objects similar to those of this company, or to amalgamate with any such company, or to sell the whole undertaking of the company or any part thereof either to a company or to an individual or individuals for such consideration as the company may think fit, and in particular for shares, debentures, or securities of any other company having objects altogether or in part similar to those of this company.

(7.) To do all matters and things whatsoever incidental or conducive to any of the aforesaid objects.

IV. The liability of the members is limited.

V. The nominal capital of the company (which may be increased) is £120,000, divided into 12,000 shares of £10 each.

*Report on the Ranch and Range by W. N. Ewing.*

148 KANSAS CITY, MO., *August 13th*, 1884.

I left here, via Dodge City, on the 23rd of July, and owing to some delays it required six days to reach the ranch, situated in Randall county (Pan Handle of), Texas, being about 250 miles southwest from Dodge City, Kansas, about two hundred miles easterly from Las Vegas and Springer, New Mexico, and about 200 miles from

Wichita Falls, Texas, these being the nearest points at present to a railroad. Five days were required to complete the examination, and herewith I hand you my report of the property.

Lands.—The lands owned in fee, about 75,000 acres, with the option of 25,000 more in fee, lie adjacent to and along the valley of the Palo Duro creek, as shown in the accompanying map (lying in the secretary's office for inspection). The lands are supplied with an abundance of living running water, while at the extreme headwaters of these running streams the water is often in pools, sometimes very deep, and fed by springs, making it ever flowing, and in some cases sinks and again appears further down the stream. Portions of these lands reach and extend beyond the breaks of the streams and reach the level plain, where are situated many large lakes that hold water only a portion of the year and in rainy seasons. Tanks or ponds can be constructed in most of these lakes or in the draws leading into them, thereby distributing water at advantageous distances along and over the entire plain.

The lands in block No. 6 and block B 5, coloured red, are the leased lands, and embrace most of the cañons of the Palo Duro and Tierra Blanca. However, the breaks of these cañons extend far above and about as shown upon the map, and are supplied
149 with an abundance of running water and springs.

The lands coloured yellow in block No. 8 and block No. 2 are on the level plain, and watered only from lakes. The pasture fence should have been built on the northern boundary of these tracts, which would have enabled the Palo Duro to have supplied water for the stock grazing on the greater portion of these lands.

The lands coloured purple on the south and west are situated on the plains, and are supplied with water only from the lakes on the plains and the waters in the breaks and the arroyos leading into the Tierra Blanca. I am informed that the breaks or draws of the Tierra Blanca extend as far west as New Mexico, and along this entire length there are occasional pools and springs that soon sink and disappear. Such being the case, there is no doubt but that a good permanent supply of water can be had by constructing or digging deep tanks in the bed of this stream. On the plains, away from the streams, are always to be found any number of lakes which hold an abundance of water most of the time, and I am told it seldom happens that all are dry at the same time. On the first day of August I saw one lake with a good supply of water on about survey No. 50, block B 5, and two lakes near the southwest corner of block 2 Z, in the purple-coloured land, around which had collected from the open plains below a thousand antelope, which I saw at one sight, and many wild horses. Tanks can be constructed on the head of the dry arroyos and in the draws leading into the lakes similar to those on the ranges of the Hansford Land and Cattle Company and Adair and Goodknight's, which are holding water successfully.

Grass.—The nature and quality of the grasses that grow on all these lands is similar to that of the grasses on adjacent ranches, to wit, "Adair and Goodknight's," "D. T. Beals'," "Dixon Creek pas-
150 ture," "Lee Scott Cattle Co.," &c., being mostly mesquite or buf-

falo and gramma grasses, and in quantity compares favourably with any adjoining range. The weather was and had been very dry for some time past and afforded an excellent opportunity to judge of both the grass and water supply. The grass along the breaks and cañons is mostly mesquite, gramma, blue stem, and bunch grass. The latter, being an early variety, furnishes grazing in the early spring. Gramma grass mostly prevails in the valley of the cañons.

Loco.—There is no loco on this ranch or range, thereby preventing the large losses of horses caused by eating this poisonous herb.

Cañons.—The cañons of the Palo Duro, from the very head-waters to the eastern limit of the ranch, are sufficiently broken to afford first-class protection in the winter, the upper half being a light cañon and beautiful valley skirted with hackberry, china, and cottonwood timber, and affording the most complete shelter and winter quarters imaginable. This cañon varies in depth from 100 feet at its head to 400 feet where it leaves the range and becomes several miles in width, containing many interesting and grand landscape views, the smaller streams emptying into the Palo Duro, below the mouth of the Tierra Blanca, are similar to the deeper portions of the Palo Duro, with the exception of the extreme head-waters of each, which rise nearer to the level of the adjacent plains, and are more accessible for stock-grazing in this vicinity. The winter protection on the upper ten miles of the Tierra Blanca and for about ten miles from the center of block B 5 is very good, but not so complete as the Palo Duro affords. The other portions of the Tierra Blanca Valley become so broad and the bluffs so low and gradual that they would not be considered good winter protection. Along the valley of the Tierra Blanca where it becomes almost a plain are several thousand
151 acres of as fine hay land as I ever saw on the western plains, and which will produce annually from one to two tons per acre of the best quality of hay. The bed of most of the dry lakes and the edges of all of them (some of which contain more than a thousand acres) produce a fine quality of hay.

Timber.—There is an almost unlimited quantity of fine cedar in the lower Palo Duro cañons and other timber, as before mentioned, suitable for the construction of houses, stables, corrals, fences, or for any other use for which timber might be required. In fact, only cedar has been used in the construction of every house, corral, stable, fence, or other improvements of the ranch.

Corrals.—There are six corrals already constructed, all of cedar, and in good repair, and first class in every respect.

Fencing.—The fencing consists of about 75 miles, as shown on the map, and is constructed of first-class large cedar posts 40 feet apart, with four stays between and four strands of galvanized steel barbed wire, well built in every respect, 20 miles of which is owned jointly by adjacent ranches. In addition to the wire fences there are about ten miles of breaks of the cañons used as fences.

Home ranch.—At the home ranch there is a comfortable cedar log house well built, containing five rooms, one and a half stories high, with cook-room adjoining; also near by a spring-house and

splendid storehouse (genuine adobe) 20 by 40 feet, blacksmith's shop, sundry store-rooms, and a splendid stable constructed of large cedar logs, made comfortable for taking care of 40 head of horses that are needed for use in winter; also shelter for wagons, etc., etc. There are also seven out-camps on the range.

Cattle.—The cows were originally Texas cattle, of average
152 size, and are in fine condition, and, from the vigorous and healthy condition of the calves, have proved themselves to be excellent mothers. The bulls are about 20 per cent. of their number Texans, the remaining 80 per cent. being graded short-horns, and are all two years old and over and in — condition.

I estimate that of the young cattle (two years old and under) about 80 per cent. show to be graded stock and compare favorably with the same-aged cattle of the neighbouring ranches. The remaining 20 per cent., which are straight Texans, look larger, more vigorous, and superior in every way to Texas cattle bred further south or the original stock. I think every Texas bull should be marketed and about 100 bulls of a higher grade added at once. I may say the cattle generally were as fat, if not in better condition generally than the cattle I saw on other ranches, with a very few exceptions. The cattle will be counted in any way that may be agreed upon.

Horses.—The horses are first-class cow horses, in good condition generally. There are 16 head of extra good mules, which, with the horses, make about 200 head in all. The horses are cheap enough at 50 dols. per head, and being really more in numbers than are actually required to do the work is the reason they are in such good condition. The 16 head of mules are worth 125 dols. to 150 dols. per head in any market.

Equipments.—The equipments consist of four wagons, one good buggy, one mowing machine, hay rake, several ploughs, harnesses, complete set of blacksmith's tools, &c.; about twenty or 30 head of hogs thrown in.

Extensions.—If the constructing of tanks is a success the limits of this ranch can be extended westerly to the borders of New Mexico, southerly about thirty miles, and in a southwesterly direction almost indefinitely.

153 The fence running from the corner of survey 85, block B 5, southeasterly across the range should be taken up and rebuilt directly south until it joined the contemplated fence on the south of the range, thereby enclosing a complete pasture for winter feeding. Perhaps it would be well to rebuild this entire western line of fence three miles further west. You could hold your cattle all summer and fall on the open plain to the west by constructing tanks and otherwise providing water. The fence extended on the south would prevent them from going in that direction, and the want of water, if you only constructed tanks, say, forty miles from the fence, would keep them from drifting westerly. If necessary, two men could be put on the westerly limit to ride that line. However, while I think it is useless to build a fence on the extreme west line, it could afterwards be done if experience should demonstrate it to be advantageous.

General remarks.—The three great essential points in a ranch are an abundance of water, plenty of grass, and complete shelter. This ranch not only enjoys all these advantages in a pre-eminent degree, but its water is well distributed, with grass unsurpassed, and its protections are as fine as you could desire. The streams abound in mosses and fish, showing the water to be everlasting, and the adjoining plains with an abundance of game. There is no reason why this property, properly stocked, should not prove a good investment. Bad management is the only thing that I can see which will prevent it from paying handsome profits. This ranch adjoins the celebrated Palo Duro ranch, owned by Messrs. Adair and Goodknight, claimed to be the finest ranch in the world, and the claim is well founded; also on the north by the ranches of D. T. Beals and others, and compares favorably with them.

(Signed) W. N. EWING.

154 *Form of Application for Shares.*

To the directors of the Cedar Valley Land and Cattle Company, Limited, Morgate street chambers, Morgate street, London, E. C.

GENTLEMEN: Having paid to the company's bankers a deposit of one pound per share on — shares in the above-named company I request you to allot me the said number of shares, and I hereby agree to accept the same or any smaller number that may be allotto me, and to pay £1 on allotment and the balance due on such shares as follows:

£1 on 15th May,
£1 on 15th June,
£– on 15th July,

and I authorize you to register me as the holder of the said shares.

Name in full: —— ——.
Address: ——.
Description: ——.
Date: ——.
Signature: —— ——.

The Cedar Valley Land & Cattle Company, Limited.

*Banker's Receipt.*

To be retained by the applicant.

Received this — day of ——, of Mr. —— ——, the sum of — pounds, being a deposit of one pound per share upon — shares in the above-named company.

For —.

155 (To be signed by the bank or secretary and retained by the applicant.)

*6 Per Cent. Debentures.*

The Cedar Valley Land & Cattle Company, Limited.

Issue of £60,000 debentures.

Share capital, £120,000, fully subscribed.

| | |
|---|---|
| Amount called up (£— per share) | £60,000 |
| Amount uncalled | £60,000 |

The total amount of the debentures is limited to the amount of the uncalled share capital.

Directors.

Lieut. Col. D. Stewart (chairman Western Mortgage and Investment Company, Limited), Fairlie House, Kilmarnock, N. B.

Lord George G. Campbell (director Western Land and Cattle Company, Limited), 2 Bryanston Square, London, W.

G. Burnett, Esq., Dundee (director Hansford Land and Cattle Company, Limited).

James Graham, Esq. (director Western Mortgage and Investment Company, Limited), 39 Ennismore Gardens, London, S. W.

T. Kingscote, Esq. (director Scottish Amicable Life Assurance Society), 59 St. James street, London, S. W.

G. D. Fisher, Esq., 116 Piccadilly, London, S. W.

Bankers.

Messrs. Fuller, Banbury, Nix & Co., 77 Lombard street, London, E. C.

The Clydesdale Bank, Glasgow, Edinburgh, and branches.

Solicitors.

156 Messrs. Markby, Stewart & Co., 57 Coleman street, London, E. C.

Secretary.

Mr. Thomas E. Webb.

Office.

Morgate street chambers, 30 Morgate street, London.

The directors are now issuing debentures to the extent of the uncalled and subscribed share capital, viz., £60,000. The articles of association strictly limit the debenture issue to that extent, and provide that the total amount of debentures in force at any one time shall not exceed the amount of the company's uncalled capital for the time being. This uncalled capital is specially hypothecated to secure the debentures. The debentures also constitute a first charge on the property in which the debenture monies and the share capital is invested, and on all other assets of the company. The se-

curity for these debentures is thus of a twofold nature and treble their amount.

The funds of the company are invested in a valuable cattle ranch in Randall county, Texas, comprising 75,000 acres of freehold land, with the option of acquiring 25,000 more in fee, a seven years' lease of 179,000 acres at 1½ cents per acre per annum, about 20,000 head of cattle, to be counted over before the final payment of the purchase-money, and the usual complement of horses, mules, and equipments necessary for the efficient work of a ranch of the first class. The directors of the company showed their confidence in the value of the property by personally undertaking the responsibility for all the preliminary expenses of the company without any consideration, present or future, beyond simple repayment of the money actually expended. Those expenses were subsequently entirely defrayed by the vendor, and thus no expense whatever to the company has been involved in its establishment. No promotion money in any
157 shape was or will be paid.

The debentures will be issued for sums of £50 and upwards, in bonds of £10, £50, £100, £200, £500, and £1,000, and also for any intermediate amounts that may be required, but for the multiples of £10 only. They will be issued at the subscriber's option, either payable to bearer or registered in the subscriber's name or names. They will thus form a readily marketable security. The interest will be payable on 1st January and 1st July in each year by coupons attached to the bond. The rate of interest will be 6 per cent. for 3, 5, or 7 years.

Application may be made on the accompanying form. The secretary of the company will also supply forms of application and any further particulars that may be required. Forms of application will also be supplied by Messrs. Markby, Stewart & Co., solicitors, 57 Coleman street, London, E. C., or by Messrs. Robertson & Co., 31 George street, Edinburgh.

June, 1885.

*Application for Debentures.*

To the directors — the Cedar Valley Land and Cattle Company, Limited, Morgate street chambers, Morgate street, London, E. C.

GENTLEMEN: I request that you will prepare and send me a debenture (or debentures) of your company, as undernoted, on the terms stated in your debenture prospectus, bearing interest at the rate of six per cent. per annum.

Signature: ——.
Name (in full): ——.
Residence: ——.
158 Profession or occupation: ——.
Date: ——, 188–.

Debentures applied for:

Debenture of £— each for — years.
" £— each for — years.
" £— each for — years.

The debentures to be made payable to bearer.
The debentures to be registered in subscriber's name.

The Cedar Valley Land & Cattle Company, Limited.

B.

*Debenture Prospectus.*

This is the exhibit, marked B, referred to in the affidavits of Duncan Stewart and Charles Stewart and Thomas Edwin Webb, sworn before me this 6th day of November, 1885.

This is the exhibit, marked B, referred to in the affidavit of George Granville Campbell, sworn before me this 13th day of November, 1885.

F. C. PENFIELD,
*Vice and Deputy Consul General.*
B. H. BORROWS,
*U. S. Consul.*

This is the exhibit, marked B, referred to in the affidavits of Thomas Arthur Fitzhardinge Kingscote and James Graham, sworn before me this 10 day of November, 1885.

F. C. PENFIELD,
*Vice and Deputy Consul General.*

159 And on the same day, to wit, on the 31st day of December, 1885, the following affidavit was filed:

In the Circuit Court of Jackson County, in the State of Missouri, at Kansas City.

J. M. COBURN and W. N. EWING, Partners Trading and Doing Business under the Firm Name of Coburn & Ewing, and W. N. Ewing, Plaintiffs,

*against*

THE CEDAR VALLEY LAND AND CATTLE COMPANY, Limited, and GEORGE DIXON FISHER, Defendants.

We, Duncan Stewart, George Granville Campbell, James Graham, Thomas Arthur Fitzhardinge Kingscote, Charles Stewart, and Thomas Edwin Webb, severally make oath and say:

1. We, the said Duncan Stewart, George Granville Campbell, James Graham, and Thomas Arthur Fitzhardinge Kingscote, are directors of the above company and have been so since its formation, in December, 1884, in conjunction with George Burnett, who died in March, and the said George Dixon Fisher, who is now in America.

2. The plaintiffs acted as agents for the company in the purchase of the property referred to, and as an inducement to the defendants and others to purchase the property they undertook, voluntarily and without any pressure or request from us or any of us, to subscribe 80,000 dollars towards the capital of the company. The letter, of which the following is a copy, from the defendant, W. N. Ewing, to Mr. George Burnett states their obligation in this respect:

OCT. 22, 1884.

Geo. Burnett, Esq., Dundee, Scotland.

160 MY DEAR SIR: Your cable saying, "If Ewing takes thirty thousand more and Munson will take two hundred thousand in stock and debentures, &c.," duly rec'd, & we replied we were unable to place more than eighty thousand dollars with Munson or otherwise; and this morning I am in receipt of your cable 22 saying Cresswell had taken $625,000 in stock and debentures, and unless Munson and myself responded likewise there was no hope, &c. This was received during the absence of my partner, who has been called to Dodge City to attend shipment of some 1,200 Hansford beeves, and as he has been doing the most of the correspondence I am at a loss to know how to write; however, I know the facts and will endeavor to give them to you.

In the first place, if Mr. Munson has to take anything else save money he would want a sufficient amount over and above his actual price to cover all chances of loss in sale of the stock and debentures so rec'd, and had he been shrewd enough to have asked such an exorbitant price as Cresswell is getting he would, I presume, be glad to take the surplus in stock and debentures. There is a large difference between actually counting out cattle at $22.00 per head than counting them partially at $27.50 to $30.00, and land at 2.50 per acre and land at $2.00 per acre.

Mr. Munson has sold his beeves in the markets here, and for which he received for a portion of them about $32.00, and he sold about time the market was the lowest. This leaves him with about 20,000 head cattle and 75,000 acres of land in fee—that is to say, I found that he only owned 75,000 acres in fee, and in order to make up the 100,000 originally offered he was intending or rather had an option in 25,000 acres for a less figure, say $1.50. This being the case, it would require to buy him with the money as follows, or rather this is my judgment:

| | | |
|---|---|---|
| 161 | 20,000 head cattle, all classes & ages, @ 20.00 | $400,000 |
| | 75,000 acres land & improvements | 150,000 |
| | Am't'g to | $550,000 |

for this sum cash in hand or payable $100,000 every 30 days would, in my opinion, buy his cattle and land, and if we were placed in this position with the cash we have good reason to believe we could make him throw in his leases, business, horses, equipments, &c., and would include $25,000 for the promoters to float company. Now, if we take $80,000 from that it would only leave for your syndicate to raise additional in actual money $445,000 to settle with Munson, $25,000 going to the promoters, for which it seems reasonable they would be willing to accept stock & debentures. I don't say this can be done positively, but I believe it, and while it leaves us short on land it leaves us in possession of the business and gives us the opportunity to raise the money for the purchase, and not only of this additional 25,000 acres, but of all the land required for the use of the company; and while I am on this point let me say that no one is

or will be so foolish as to buy the lands in this range when all the water is owned by others; therefore I am willing to take my chances to buy these lands as cheap as Mr. Munson can and just as satisfactory, & finally secure them for the company without having to pay an exorbitant price. Now, it does seem to me that such a sum could be raised for such a vast property much easier than 296,000 pounds could be for the Cresswell property, notwithstanding he agrees to take $625,000 himself.

On the other hand, let me say that Mr. Munson's price is $730,000.00, and if we have to pay him in anything else than
162 the cash he will not budge a cent. The fact is he is pushed for money, and that is the reason why he is offering his property so cheap. Another is he is not a cattle man and wants to get out of the business and out of debt. The condition of our finances this year has been exceedingly annoying to parties owing large am'ts, and no doubt large debts have been hard to arrange, and I venture to say that, after having passed through the bitter experiences of this summer, Mr. Munson would be very loth to part with a man who had the cash without making a sale of his ranch. Moreover, I defy any one to point me out such a property for such a price. Such a bargain has not been offered for many a day.

My idea is, when you can see your way clear to raise the am't indicated herein, *is* to give us instructions to buy at the best figures we can and place us in possession of the money to enable us to dictate our own figures and terms, and for the remainder required we would have to take the chances that we could raise it in time.

Mr. Clay estimates the value of Cresswell's property as follows:

| | |
|---|---|
| 35,000 head cattle @ 27.50 | £198,028 |
| 150,000 acres land @ 2.50 | 77,165 |
| Horses, mules, fences, &c. | 4,115 |
| Texas steers | 22,020 |
| Am't'g to | £301,328 |

Or a fraction over $1,500,000.00, or nearly three times as much as Munson's price, who has more than half as many cattle, half as many acres of land in fee, and twice as much range (referring to the portions Munson can extend his range), and equally as many horses and equipments and more miles of fence and for one-third the price. I will assert without fear of contradiction that if
163 you can buy Munson's ranch, as I have indicated you could, that within one year it can be so managed as to have just as much freehold land and equally as many cattle, horses, bulls, & other equipments and for two-thirds the capital stock of the Cresswell Ranch and Cattle Co., or about one million dollars.

Moreover, I would like to say that in making my subscription of $80,000.00 I would do so on the understanding that the property should be bought for the lowest cent, as I would have to pay mine in cash. I would wish to buy the property on the same basis.

I shall regret very much if you lose the opportunity of this ranch.

I am reliably informed that Mr. Munson has been within a few points of closing the sale with American parties several times, & I have been fearful he would do so, but did not mention it to you for good reasons; besides, it is almost impossible to raise large am'ts for anything in the U. S. Had I not known this perhaps I should have written before.

I will do anything I can to keep this deal along, knowing it is certain of success as a venture and will lead to other matters greatly to our interest.

I am, yours truly, W. N. EWING.

P. S.—Probably ere this you have seen Col. Stewart, who can more fully explain.

The plaintiffs' undertaking in regard to the capital to be subscribed for by them was, we believe, entered into by them, as they considered the purchase to be an advantageous one, and that the investment was likely to be profitable.

3. At the time when the shares were offered for subscription in London the money market was exceedingly dull, and it was
164 found that if sufficient capital was to be subscribed to purchase the property it must be done by private subscription. The directors were, therefore, under the necessity of requiring the defendants to fulfil their undertaking to subscribe for the shares, which undertaking they appeared to be perfectly ready to perform.

4. The plaintiff, J. M. Coburn, came to London in the month of January, 1885, but the question of the amount of capital to be subscribed for by him and Mr. Ewing was postponed until Mr. Ewing's arrival, in the following month. Mr. Ewing came to London in the end of February, 1885, and, after some verbal and friendly discussion with him and ourselves as to the amount of the shares for which he and his partner should subscribe, I, the said Charles Stewart, addressed to him the letter dated the 28th February, of which the following is a copy:

57 COLEMAN STREET, LONDON, E. C., 28 *Feb'y* 1885.

W. N. Ewing, Esq., Cedar Valley Co'y.

MY DEAR SIR: I believe that the directors intend to propose that you should subscribe for 2,400 shares, and that this subscription and the payment of the £5 per share thereon (£12,000—$60,000) shall be taken as fulfilment of your agreement to put $80,000 into the company. I believe that one of your letters speaks of putting "$80,000 in cash" into the company, and therefore, tho' it is true that there will be a further uncalled liability of £12,000 ($60,000) on the 2,400 shares, I hope you will consider the arrangement a fair and reasonable one. Please understand that I am not authorized to propose it to you, but I understand that it is what the directors intend to propose, and I mention it to you privately beforehand that you may have time to consider it.

165 Yours faithfully, CHARLES STEWART.

or will be so foolish as to buy the lands in this range when all the water is owned by others; therefore I am willing to take my chances to buy these lands as cheap as Mr. Munson can and just as satisfactory, & finally secure them for the company without having to pay an exorbitant price. Now, it does seem to me that such a sum could be raised for such a vast property much easier than 296,000 pounds could be for the Cresswell property, notwithstanding he agrees to take $625,000 himself.

On the other hand, let me say that Mr. Munson's price is $730,000.00, and if we have to pay him in anything else than
162 the cash he will not budge a cent. The fact is he is pushed for money, and that is the reason why he is offering his property so cheap. Another is he is not a cattle man and wants to get out of the business and out of debt. The condition of our finances this year has been exceedingly annoying to parties owing large am'ts, and no doubt large debts have been hard to arrange, and I venture to say that, after having passed through the bitter experiences of this summer, Mr. Munson would be very loth to part with a man who had the cash without making a sale of his ranch. Moreover, I defy any one to point me out such a property for such a price. Such a bargain has not been offered for many a day.

My idea is, when you can see your way clear to raise the am't indicated herein, *is* to give us instructions to buy at the best figures we can and place us in possession of the money to enable us to dictate our own figures and terms, and for the remainder required we would have to take the chances that we could raise it in time.

Mr. Clay estimates the value of Cresswell's property as follows:

| | |
|---|---|
| 35,000 head cattle @ 27.50 | £198,028 |
| 150,000 acres land @ 2.50 | 77,165 |
| Horses, mules, fences, &c. | 4,115 |
| Texas steers | 22,020 |
| Am't'g to | £301,328 |

Or a fraction over $1,500,000.00, or nearly three times as much as Munson's price, who has more than half as many cattle, half as many acres of land in fee, and twice as much range (referring to the portions Munson can extend his range), and equally as many horses and equipments and more miles of fence and for one-third the price. I will assert without fear of contradiction that if
163 you can buy Munson's ranch, as I have indicated you could, that within one year it can be so managed as to have just as much freehold land and equally as many cattle, horses, bulls, & other equipments and for two-thirds the capital stock of the Cresswell Ranch and Cattle Co., or about one million dollars.

Moreover, I would like to say that in making my subscription of $80,000.00 I would do so on the understanding that the property should be bought for the lowest cent, as I would have to pay mine in cash. I would wish to buy the property on the same basis.

I shall regret very much if you lose the opportunity of this ranch.

I am reliably informed that Mr. Munson has been within a few points of closing the sale with American parties several times, & I have been fearful he would do so, but did not mention it to you for good reasons; besides, it is almost impossible to raise large am'ts for anything in the U. S. Had I not known this perhaps I should have written before.

I will do anything I can to keep this deal along, knowing it is certain of success as a venture and will lead to other matters greatly to our interest.

I am, yours truly, W. N. EWING.

P. S.—Probably ere this you have seen Col. Stewart, who can more fully explain.

The plaintiffs' undertaking in regard to the capital to be subscribed for by them was, we believe, entered into by them, as they considered the purchase to be an advantageous one, and that the investment was likely to be profitable.

3. At the time when the shares were offered for subscription in London the money market was exceedingly dull, and it was
164 found that if sufficient capital was to be subscribed to purchase the property it must be done by private subscription. The directors were, therefore, under the necessity of requiring the defendants to fulfil their undertaking to subscribe for the shares, which undertaking they appeared to be perfectly ready to perform.

4. The plaintiff, J. M. Coburn, came to London in the month of January, 1885, but the question of the amount of capital to be subscribed for by him and Mr. Ewing was postponed until Mr. Ewing's arrival, in the following month. Mr. Ewing came to London in the end of February, 1885, and, after some verbal and friendly discussion with him and ourselves as to the amount of the shares for which he and his partner should subscribe, I, the said Charles Stewart, addressed to him the letter dated the 28th February, of which the following is a copy:

57 COLEMAN STREET, LONDON, E. C., 28 *Feb'y* 1885.

W. N. Ewing, Esq., Cedar Valley Co'y.

MY DEAR SIR: I believe that the directors intend to propose that you should subscribe for 2,400 shares, and that this subscription and the payment of the £5 per share thereon (£12,000—$60,000) shall be taken as fulfilment of your agreement to put $80,000 into the company. I believe that one of your letters speaks of putting "$80,000 in cash" into the company, and therefore, tho' it is true that there will be a further uncalled liability of £12,000 ($60,000) on the 2,400 shares, I hope you will consider the arrangement a fair and reasonable one. Please understand that I am not authorized to propose it to you, but I understand that it is what the directors intend to propose, and I mention it to you privately beforehand that you may have time to consider it.

165 Yours faithfully, CHARLES STEWART.

Mr. Ewing then addressed to the said Duncan Stewart the letter dated 3rd March, 1885, of which the following is a copy:

LONDON, *March* 3, 1885.

DEAR SIR: Referring to our conversation yesterday in regard to my subscription to the capital stock of the Cedar Valley Co. and the remuneration to be paid to me as manager of the company in America, I beg to say that I have given these matters fullest and most serious consideration, and, looking to my own position, I regret that I can come to no other conclusion than the following: I will subscribe for 2,000 shares, but can do so only upon the condition that I am to be appointed manager of the company for a period of 5 years.

Appreciating your views as to the necessity of an economical administration for the first year, I am willing to leave to your honorable board to suggest a salary which in their judgment they can afford to pay in view of the earnings that may be reasonably expected and the work to be done. The remaining four years I shall expect $5,000.00 per year, in addition to which, of course, all travelling, office, and such like expenses to be paid by the company.

I am extremely sorry that the misconstruction of my letters should have led to what is to me such an unpleasant incident. I had not the slightest idea of incurring, under any circumstances, a liability beyond $80,000, and, as the above offer will involve a subscription of $20,000 in excess of my original purpose, I hope you will concur with me that this is as much as I can be fairly expected to do under the circumstances.

166 I am, dear sir, most sincerely yours, W. N. EWING.

To Lt. Col. D. Stewart, Cedar Valley Land & Cattle Co. (Lim.), London.

5. At the board meeting which was held on the following day it was distinctly explained to Mr. Ewing that his own and Mr. Coburn's subscription for shares could not be accepted conditionally on his being appointed as manager, inasmuch as he had distinctly undertaken in writing to subscribe even for a larger amount than that which was finally accepted. Mr. Ewing thereupon, on behalf of himself and Mr. Coburn, made a formal and unconditional application for two thousand shares, and that number of shares *were* accordingly allotted to them. The board were, however, willing to appoint Mr. Ewing as manager for five years on certain terms, and his appointment and the conditions referred to were set forth in the agreement which was entered into and concluded with him, and a copy of which is set forth in plaintiffs' petition.

5. We deny, therefore, that Mr. Ewing's subscription for shares was in any way conditional on his being appointed manager for five years, and we further say that, if it was dependent on that condition, that condition was duly fulfilled, Mr. Ewing having been in fact appointed manager for that period on the condition stated in the

memorandum of agreement dated the 4th March, 1885. We say, however, that that agreement does not and could not imply that Mr. Ewing is entitled to hold his office as manager for five years, whatever may be his conduct during that period.

6. In the month of August, 1885, when Mr. George Dixon Fisher, one of the directors of the company, was in America, he dis-
167 covered that Mr. Ewing, in conjunction with Mr. Coburn, had perpetrated certain frauds, in consequence of which the directors dismissed him from the office of manager. The said frauds consisted in the appropriation of large sums received by them as commission on the purchase of the company's property without the consent or knowledge of their employers and to the serious detriment of the company's interests.

An action is now pending for the recovery of the sums so received by the plaintiffs.

DUNCAN STEWART.
CHARLES STEWART.
THOMAS E. WEBB.
THOS. A. F. KINGSCOTE.
JAMES GRAHAM.

Sworn at the consulate general of the United States of America, at London, by Duncan Stewart, Charles Stewart, and Thomas Edwin Webb before me this 6th day of November, 1885.

F. C. PENFIELD. [SEAL.]
*Vice and Deputy Consul General.*

Sworn at the consulate general of the United States of America, at London, by Thomas Arthur Fitzhardinge Kingscote and James Graham before me this 10th day of November, 1885.

F. C. PENFIELD. [SEAL.]
*Vice and Deputy Consul General.*

Sworn at the consulate of the United States, in Dublin, Ireland, by George G. Campbell this 13th day of November, 1885.

168 GEORGE G. CAMPBELL.

B. H. BORROWS, [SEAL.]
*U. S. Consul.*

The affidavit of Geo. D. Fisher, filed on the 31st day of December, 1885, is in words and figures as follows, to wit:

In the Circuit Court of the United States within and for the Western District of Missouri, Western Division.

THE CEDAR VALLEY LAND AND CATTLE COMPANY, Limited, and GEORGE DIXON FISHER, Complainants,
*v.*
JAMES M. COBURN and WILLIAM N. EWING, Partners, &c., as Coburn & Ewing, and WILLIAM N. EWING, Respondents.

On cross-bill.

*Affidavit of George Dixon Fisher.*

UNITED STATES OF AMERICA,
*Western District of Missouri,* } *ss:*

GEORGE DIXON FISHER, of lawful age, being first duly sworn, on oath says—

That he is a subject of the United Kingdom of Great Britain and Ireland and a resident of the city of London, and is now temporarily residing in Kansas City, Missouri.

That he is one of the complainants in a certain cross-bill entitled as above and heretofore filed in this court, and is a shareholder in and one of the directors of The Cedar Valley Land and Cattle Company, Limited, the other complainant in said cross-bill, and has been such shareholder and director since December, 1884, and
169 that he has authority, by duly authorized power of attorney, to transact the business of said company in the United States of America.

That before taking stock in said company he examined carefully its prospectus and made diligent inquiry into its affairs, and learned from said prospectus and from other sources that no promotion money was to be allowed, and that Coburn & Ewing, of Kansas City, Missouri, respondents in said cross-bill, who were acting for said company in the purchase of the ranch in Texas, were to take a large interest, so that affiant was convinced that the enterprise was upon a sound basis and in all repects *bona fide*, and therefore subscribed and paid for stock and accepted the position of director as aforesaid.

That said complainant company paid the traveling expenses, attorneys' fees, and other incidental expenses charged by said Coburn & Ewing in the matter of purchasing said ranch and cattle, their itemized bill for which is herewith submitted, marked "Exhibit A," and, in consideration of the services of said Ewing in the matter of the purchase, dated his contract for employment as manager (which was really made on the 4th day of March, 1885) back to January 1, 1885, so that his salary of $3,000 per annum would begin in January instead of March, although his duties as such manager did not begin until March 4, 1885; that this was done as a matter of favor to said Ewing, and was prompted by the fact that the company and its directors understood that he was not charging or receiving a regular commission from any source in the purchase of said property.

That said complainant Ewing, in his own and the behalf of his partner, J. M. Coburn, disclaimed all intention of charging any commission against the complainant company in the purchase of the ranch and cattle from W. B. Munson, and wrote a letter
170 to that effect to Col. Duncan Stewart, chairman of said company, a copy of which letter, marked "Exhibit A," is hereto attached.

And affiant further says that, at and before the time of becoming such stockholder and director, this affiant was advised of the fact that Coburn & Ewing, of Kansas City, Missouri, were acting as the agents of the company and then engaged in negotiating for the purchase of the ranch belonging to W. B. Munson, in Texas; that affiant then knew nothing of any arrangement whereby the said Coburn & Ewing were to receive any compensation or commission from the said Munson upon the purchase of said property, and had no knowledge, belief, or suspicion that the said Coburn & Ewing were to have any interest adverse to the said company in connection with said transaction; and affiant never knew or heard of the fact that the said Coburn & Ewing had retained commissions out of the moneys sent by the company to them with which to pay for said property until in August last, when affiant learned the same from W. B. Munson; that as soon as affiant learned the fact that a fraud had been committed in the manner above mentioned he communicated the same at once to the board of directors of the complainant company, in London, and proceeded at once to London to make fuller report and explanation and to receive instructions from the company.

Upon ascertaining the facts the board of directors immediately passed a resolution dismissing the said Ewing from the position of manager and appointing this affiant the general — and attorney-in-fact of the company, with full power to proceed to America, discharge the said Ewing, and appoint another manager. Affiant's power of attorney was in writing, and is herewith submitted.

Affiant returned to America without unnecessary delay and delivered to the said Ewing a written notice of his dismissal, which
171 is set out in the bill, and was proceeding to discharge his duty as general agent of the complainant company by taking charge of the property and by selecting and appointing another manager when he was served with the injunction hereinafter more particularly referred to; that affiant is not the permanent manager of the business of the said company, but is in temporary charge, with authority and direction to employ an experienced and competent person in whom he and the company can have confidence, and is now in negotiation with parties with a view to performing this duty.

Affiant further states that he was a member of the board of directors and present in the meeting in London in March last, when the letter of the respondent Ewing, addressed to Stewart, one of the directors, proposing to subscribe on behalf of the firm of Coburn & Ewing for 2,000 shares of the stock of the company, upon condition that the company would employ him as a manager for five years, was presented to the board, read, and fully considered; and affiant says that the said proposition was unanimously rejected by the

board, it being the opinion of all the directors, as well as of their counsel, that the board had no authority to make such a contract, and that it would be inexpedient to attempt to do so. It was therefore decided that the application as made should be rejected, and thereupon the said Ewing on behalf of Coburn & Ewing made an unconditional application in writing for 2,000 shares of stock, which was accepted; that the board refused to consider the application of Ewing for appointment as manager in connection with the application for stock, and the two were treated throughout as separate, distinct, and independent matters.

And this affiant further states that heretofore, to wit, on the 5th day of October, 1885, in obedience to the wish and
172 instructions of the board of directors of said company, he, affiant, notified said Ewing that he, Ewing, was discharged from his position as manager of said company's ranch, and thereupon demanded that said Ewing surrender all the books, papers, and property of said company then in his possession to affiant in accordance with the wishes and expressed desire of the company, and that then and there said Ewing expressly refused to surrender or turn over to affiant or any other person any of the books or property of said company, but said to affiant in substance that he would not recognize his discharge, and that it was his intention and determination to retain the post of manager of said ranch in spite of said company, and to continue to transact the business of said company as such manager in America; and said Coburn & Ewing then and there both said to affiant in substance that in order to retain the position of manager they would resort to every means known to the law, and that when litigation began it would be no mere child's play; that said Ewing has ever since retained the books of said company, and still claims and pretends that he is the manager of its ranch and cattle.

And affiant further says that on the 6th of October, 1885, he notified the Merchants' National Bank of Kansas City, Missouri, with which the said Ewing had been doing the business of said cattle company as its manager, of the fact that said Ewing had been discharged, and that he had no power to further represent said company; that on the same day, to wit, the 6th day of October, 1885, affiant, then and theretofore having full power and authority to represent and attend to the business affairs of said cattle company, went to said bank and was by its officers informed that there was
173 a balance due to said bank by said complainant company of seventeen hundred and seventy-two dollars and ninety cents ($1,772.90), and thereupon said affiant paid said balance in full and took the receipt of said bank therefor, with the intention of closing the account between said bank and said company, and affiant supposed that said Ewing would not open any further account between said company and said bank, because he had duly notified said bank of said Ewing's discharge and because said Ewing had no right or authority so to do.

But affiant says that said Ewing, on the 4th day of November, 1885, wrote a letter to Thomas E. Webb, secretary of said company

residing in London, England, wherein he, said Ewing, claimed that on November 4th, 1885, he, as manager of said cattle company, still had an account with said Merchants' National Bank, and that the account showed an indebtedness of two thousand and one and $\frac{80}{100}$ dollars ($2,001.80) due by said company to said bank.

That as soon as affiant learned that such a claim was set up by said Ewing he, affiant, immediately called at said bank, and was there informed by the officers of said bank that an account in the name of the said Cedar Valley Land & Cattle Company, Limited, had been opened with said bank, and that at that time there was a balance in favor of said company of about $73.00; that affiant then asked for a statement of the account, and the cashier of said bank, Mr. O. P. Dickinson, told affiant that he could not furnish said statement without the authority of said W. N. Ewing; that affiant is informed and believes that James M. Coburn, the partner of said Ewing, is and for some time past has been one of the directors of said bank; and affiant says that the secretary of said cattle company, Mr. Webb, sent to affiant from London what purports to be and which the affiant believes to be a true copy of said letter from Ewing to Webb, and affiant has attached said copy hereto, marked "Exhibit B."

174 And this affiant further says that he was a co-respondent with the Cedar Valley Land and Cattle Company, Limited, in a suit in equity instituted in October, 1885, by J. M. Coburn and W. N. Ewing in the district court of Oldham county, Texas; that said respondents, being the only re-pondents in said suit and aliens and subjects of the said United Kingdom of Great Britain and Ireland, by proper petition and bond duly removed said cause to the circuit court of the United States within and for the northern district of Texas; and thereupon, after transcript duly filed, the same stood for hearing at Graham, in said district. Said suit was brought by Coburn and Ewing to enforce the specific performance of a contract of employment, a copy whereof is contained in a certain bill of complaint hereinafter mentioned, wherein J. M. Coburn and W. N. Ewing are plaintiffs and said cattle company and this affiant are respondents, now pending in the United States circuit court for the western district of Missouri, at Kansas City; that the bill of complaint in this paragraph first aforesaid also prayed an injunction to restrain affiant and said company from interfering with the powers or rights of said Ewing as manager of said company, and that the judge of said district court of Oldham county caused a preliminary injunction to be issued and served upon affiant in accordance with the prayer of said bill of complaint; that said bill of complaint was and is in substance the same as a certain other bill of complaint, hereinabove referred to, filed by the said plaintiffs in circuit court of Jackson county, at Kansas City, in the State of Missouri, a short time prior, in said year 1885, to the time said suit was instituted in said county of Oldham, in the State of Texas; that said suit in said Jackson county was based upon the said contract between the same parties and sought the same relief by injunction

175 and was duly removed by said affiant and said company to

and is now pending in the circuit court of the United States for the western district of Missouri, at said city of Kansas, and was brought before said suit was begun in Texas; that after said cause — was instituted in Texas as aforesaid had been removed from said county of Oldham and the transcript filed in the United States circuit court for the northern district of Texas affiant and said company, respondents, then gave due notice to said Coburn & Ewing that they would, at Graham, Texas, on December 4th, 1885, before the Honorable A. P. McCormick, judge of said United States circuit court, move to dissolve said injunction issued by the said State court, in Oldham county, Texas, and thereupon affiant and said company, on the 4th day of December, 1885, filed their answer in said United States circuit court, at Graham, Texas, wherein they denied all the pretended equities set forth in the bill of complaint; that the answer so filed was substantially the same as the joint and several answer of affiant and said company now on file in the suit aforesaid now pending before this honorable court; that afterwards, on the same day, to wit, the 4th day of December, 1885, affiant and said company filed before the said Hon. A. P. McCormick, at Graham, in pursuance of said notice, their motion to dissolve the injunction theretofore issued in said cause, a copy of which motion, marked "Exhibit C," is made part hereof; that thereupon said Coburn & Ewing, although duly notified, and then and there represented by counsel, viz., Mr. Chase, of the firm of Walters and Chase, of Topeka, Kansas, and Mr. Temple Houston, of Mobeetie, Texas, who were both present at Graham, before said Hon. A. P. McCormick, representing the said Coburn & Ewing, asked for a postponement of the hearing of said motion to dissolve; but the said judge, the said A. P. McCormick, required the matter of said motion to be proceeded with, and the same was argued by counsel for com-
176 plainants and respondents, and, after hearing affidavits and the argument, the said judge delivered in writing an opinion, a copy of which, marked "Exhibit D," is made a part hereof.

That said Exhibit D is a true and correct copy of said opinion; that thereupon, after delivering said written opinion, said judge made and signed and ordered of record the decree, a true copy of which, marked "Exhibit E," is made part hereof.

And this affiant further says that heretofore, to wit, about the 24th of October, 1885, there were about two thousand head of beef cattle belonging to said company en route to market, and then about 150 miles distant away from said company's ranch, in the State of Texas, where the cattle of said company are usually kept, and that said cattle were being taken to market and attended with considerable expense; that the president of said cattle company had directed said Ewing, and that he, said Ewing, knew it to be the wish and desire of the directors and stockholders of said company, to gather all cattle available for market and sell the same in the fall of 1885, in order that the board of directors might be able, out of the proceeds of such sale, to declare and pay a dividend to the stockholders of said company.

That, in order to thwart the purposes of said company, as affiant

believes, said Ewing, after he was notified of his discharge from the position of manager, and about the time he obtained said preliminary writ of injunction from the State court of said county of Oldham, caused said two thousand head of said company's cattle to be stopped and sent the same back to said company's ranch, and prevented said company from putting said cattle upon the market. Said cattle were in fair condition for market, and had been gathered
177 and collected at considerable expense, and were attended by the servants of said company at great expense to it; that quite a number, as affiant has reason to believe, were old cattle that cannot be gotten in as good condition again for sale or market; that the expense attendant upon the driving of said beef cattle back and forth from and to the point where they were stopped by said Ewing and the loss by shrinkage and otherwise to said company was very great; that said Coburn, as affiant believes, aided and abetted said Ewing in his wrongful course in stopping said cattle and preventing their sale; that said Ewing ever since his discharge has claimed and still claims that he is manager and in possession of said company's ranch.

And affiant further says that there is a large number of cattle belonging to said company now on its said ranch in Texas, viz., about twenty-seven thousand head, of the value of about five hundred and fifty thousand dollars, and also a considerable amount of other personal property, consisting of horses, mules, and ranch equipments.

That under his employment as manager said Ewing has hitherto exercised full control of said ranch and cattle, with power to make sales, employ hands, and incur debts relating to the management of said ranch property, subject only to the board of directors of said company, and ever since his discharge he has claimed the right to and now threatens to act further as the manager of said ranch property.

And further affiant saith not.

GEORGE DIXON FISHER.

Subscribed and sworn to before me this 16th day of December, 1885.

HENRY STUBENRAUCH,
*Commissioner of United States Circuit Court for the Western District of Missouri.*

178 "EXHIBIT A A."

SOUTHWESTERN LAND AND TIMBER CO.,
KANSAS CITY, MO., 188–.

Office: 2 & 3 Walworth block.

Geo. Burnett & Co. Dr. to W. N. Ewing.

For monies paid in making examination of the Palo Duro ranch—trip from Kansas City, via Dodge City, Clarendon, Tex., Wichita Falls, and return to Kansas City—as follows:

| | |
|---|---|
| Carriage K. C'ty, 50c.; sleeper to Dodge, $3.00 | $3 50 |
| Meals en route, $1.50; hotel, Dodge, $2.00 | 3 50 |

| | | |
|---|---|---|
| R. R. to Dodge | | 10 80 |
| Incidental exp. from Dodge to Clarendon, Texas (3 weeks) | | 44 70 |
| Stage from Clarendon to Wichita Falls | | 20 00 |
| Meals en route & hotel Wichita Falls | | 7 50 |
| R. R. & other expenses from W. Falls to Kansas City | | 30 |
| Cable Aug. 4 | | 4 55 |
| | 8 00 | |
| | 85 | |
| Telegrams Aug. 30 & map | 75 | 12 95 |
| | 75 | |
| | 2 60 | |
| " Sep. 4 | | 18 20 |
| | | $155 70 |
| Less am't p'd by C. & E. draft | | 30 |
| | | $125 70 |

Rec'd payment of Coburn & Ewing.
(Signed) W. N. EWING.

179 Burnett syndicate in ac. with Coburn & Ewing.

| Dr. | | | Cr. |
|---|---|---|---|
| 1884. | | | |
| Aug. 30. | To cash, W. N. Ewing | 30 00 | |
| Sep. 10. | " cable | 3 25 | |
| " " | " " | 12 35 | |
| " " | " stenographic labor | 10 00 | |
| " 15. | 1 telegram | 59 | |
| " 29. | 1 " | 1 00 | |
| " " | To 1 cable | 18 20 | |
| " " | " 1 " | 16 90 | |
| " " | " 1 " | 5 20 | |
| Oct. 20. | " 1 " | 11 70 | |
| " " | " 1 " | 8 45 | |
| " " | " stenographic labor | 12 50 | |
| Nov. 19. | " Ham. Bell | 52 00 | |
| " " | " W. N. Ewing | 125 70 | |
| " " | " Pacific Tel. Co., 1 cable | 6 50 | |
| Dec. 17. | " Hansford Land & Cattle Co. | 31 30 | |

The Cedar Valley Land & Cattle Company, Limited, to Coburn & Ewing, Kansas City, Mo.

May 1st, 1885:

For amount of ac. rendered to company, with vouchers for same 345 64

$345.64. KANSAS CITY, Mo., *May 1st*, 1885.

Received of the Cedar Valley Land and Cattle Company, Limited, three hundred forty-five $\frac{64}{100}$ dollars in full settlement of the
180 above account.

(Signed) COBURN & EWING.

The Cedar Valley Land and Cattle Company, Limited, to Coburn & Ewing, Kansas City, Mo.

May 1st, 1885:

| | | |
|---|---|---|
| For amount paid W. B. Munson on ac., as per his contract for sale of ranch to this company | | 100,000 00 |
| Amount paid in N. Y. funds, John Paton & Co. | $99,791 80 | |
| Amount paid in Kansas City funds | 208 20 | |
| | $100,000 00 | |

$100,000.00. KANSAS CITY, Mo., *May 1st*, 1885.

Received of the Cedar Valley Land and Cattle Company, Limited, one hundred thousand dollars in full settlement of the above account.

(Signed) COBURN & EWING.

The Cedar Valley Land & Cattle Co., L'd, to Coburn & Ewing, Kansas City, Mo.

May 1st, 1885:

| | |
|---|---|
| For 1 telegram, 2.30; 5 telegrams, 22.50; 1 cablegram from Dallas, 63.25 | 88 05 |
| 8 telegrams, 6.40; am't paid Robertson & Coke, attorneys, 500.50 | 506 90 |
| 1 cablegram, 11.50; 1 telegram, .56; 1 map, 12.00; coloring map, 2.50 | 26 56 |
| W. N. Ewing's expenses to Texas & return, 2 trips | 260 20 |
| 181 | |
| 2 telegrams, 2.40; 2 cablegrams, 19.75; stenographic labor, 4.20, 3.00 | 29 35 |
| 1 cablegram, 2.00; sign-painting, 8.97 | 10 97 |
| 1 " 5.00 | 5 00 |
| | $927 03 |

$927.03. KANSAS CITY, Mo., *May 1st*, 1885.

Received of the Cedar Valley Land & Cattle Company, Limited nine hundred twenty-seven $\frac{3}{100}$ dollars.

(Signed) COBURN & EWING.

"EXHIBIT A."

Copy.

KANSAS CITY, Mo., *August* 22, 1885.

Col. Duncan Stewart, chairman Cedar Valley Land and Cattle Co. (Limited), London, England.

DEAR SIR: I send you this communication for the express purpose of calling the attention of the company to some confusion that

has been produced in the last few days by your representative, Mr. Fisher.

Long before the corporation was formed my partner, Mr. Coburn, and myself had this ranch for sale, for which Mr. Munson was to allow us a commission. To effect a sale it was necessary to have a purchaser of large means, and through Mr. Burnett this corporation was formed and in which we took stock. The ranch was very cheap as bought, and we knew it offered unusual inducements, and for that reason we did all we could to promote the organization. The company has never paid us a cent, nor have we ever expected any compensation from that source.

Mr. Fisher now conceives the idea that it was our duty to turn over to the company the amount paid us as agreed by Mr.
182 Munson for bringing about the sale of the ranch. We, of course, refused to pay anything. To us it is perfectly clear that we have done nothing but what we had a perfect right to do, and we certainly will stand to the end just where we have placed ourselves, and to us the demand of Mr. Fisher appears to be entirely unreasonable.

As you are aware, Munson has not been paid in full, and after your last remittance had been placed to our credit in New York the company directed it to be withheld. While Mr. Fisher was here we made a draft, placing the money as far as in our power in the hands of Mr. Fisher, and we presume he has paid Mr. Munson. Anyhow that will be between you and him, as he left me in entire ignorance as to his proceedings. We did all we could to protect the company's credit, and in furtherance of this purpose I have become personally responsible to the bank here on account of the company for several thousand dollars, and when Mr. Fisher's attention was called to this he treated it with the greatest unconcern, not only refusing to reimburse the bank for the money advanced to the company, but also refusing to leave me any funds with which to pay drafts drawn by the superintendent for wages, &c., which, if dishonored, would injure the credit of the company in Texas to an extent which you can hardly realize. In fact, he is the wrong man to send to this country, as his ways are oftentimes offensive and insulting to an extent that is wholly unbearable.

I am trying to do the very best I can for the company, and will continue to do so as long as I occupy my present position, but the interference of such men as Mr. Fisher, in my judgment, will be highly detrimental to the company. Mr. Coburn and I are per-
fectly responsible. If we owe the company anything we are
183 ready in any proper manner to have the fact ascertained. No cattle interest in the West has a better outlook than this. It was bought on especially favorable terms, and the delivery was even more favorable. Not a mistake has been made in the management since of which I am aware.

Our whole connection with this business from the beginning ed are willing to disclose, and if any additional information is desir d we stand ready to furnish it, but for the sake of our reputation an for the sake of the money interest we have involved we protest

against the methods employed by Mr. Fisher. If the company is wrecked the fault shall not lie at my door.

With high regard, I am, very truly, your obedient servant,

(Signed) W. N. EWING.

KANSAS CITY, MO., *Nov. 4th*, 1885.

Thomas Webb, Esq., secretary Cedar Valley Land & Cattle Co'y, Lim'd, London, England.

DEAR SIR: Enclosed herewith please find my ac. for October, showing an indebtedness of $2,101.80 to the Merchants' National Bank of this city, with the necessary vouchers, (8) eight in number, which I trust will prove correct and satisfactory.

*Receipts.*

$968.79 is to be credited to cattle, same being the net proceeds of the sale to Mr. Willingham last summer of the wagon and harness used by the "bull outfit" in charge of M. D. Duvall.

Kindly send me a list of the names and numbers of my
184 September vouchers, and oblige—

Yours respectfully, W. N. EWING, *Manager.*

"EXHIBIT B."

"EXHIBIT C."

(Copy.)

In the Circuit Court of the United States, Northern District of Texas, at Graham.

J. M. COBURN and W. N. EWING, Partners, &c., and W. N. EWING
*v.*
THE CEDAR VALLEY LAND AND CATTLE COMPANY, Limited, and GEO. D. FISHER.

Now come the said respondents and move the court to dissolve the injunction heretofore granted herein upon the following grounds, to wit:

1. Because all the equities set forth in the bill are denied by the answer under oath of respondents.

2. Because the alleged agreement set forth in the bill whereby, as alleged, complainant Ewing was to receive as a bonus for taking 2,000 shares of the stock of the respondent a valuable — for a term of years as manager of said company was, if made, void, and will not be enforced by a court of equity.

3. Because the contract for the employment of said Ewing as manager set out in the bill is not capable of being enforced,
185 either affirmatively by decree for its specific performance or negatively by way of injunction to restrain its violation.

4. Because the complainants have an adequate remedy at law.

5. Because the bill is not verified as required by law.

6. Because all the claims of the complainants upon which the injunction was allowed are now so fully contradicted and disputed that a preliminary injunction should not be sustained.

7. Because the injunction was granted without notice and obtained by the suppression of material facts.

8. Because the complainants, prior to the institution of this suit, brought the same suit for the same relief in the circuit court of the United States for the western district of Missouri, which court has jurisdiction concurrent with this court over the parties and subject-matter of this controversy, and said suit is still pending in said court.

9. Because the injunction ought to be dissolved, in the exercise of a sound discretion.

10. Because the contract for the employment of complainant Ewing as manager, set out in the bill, was obtained by concealment and fraud, and will not, therefore, be enforced by a court of conscience and of equity.

11. Because the complainants do not come into a court of equity with clean hands.

12. Because the complainant Ewing was removed from his position as manager of the respondent company for good and sufficient cause.

13. Because the bill of complaint, on its face, is insufficient to warrant an injunction or any other relief.

GEO. W. McCRARY,
ADAMS & FIELD,
*Solicitors for Defendants.*

186 "EXHIBIT D."

Copy.

*Opinion of Judge McCormick.*

The bill in this case was addressed to the State district court for Oldham county. It shows, in substance, that the complainants are citizens of Missouri and the defendants aliens, the defendant corporation being organized under the laws of Great Britain and having its principal office in London, and the other defendant being a resident of London and subject of Great Britain; that the defendant company is the owner of a large ranch (75,000 acres or more) in the northwestern part of the State (Pan Handle) and of large herds of cattle thereon, same being many thousand (numbers given) and of the value—the cattle and other personal property—of over $500,000; that in March, 1885, the complainants became the purchasers of the stock of the defendant corporation to the extent in the value of $100,000, paying thereon and therefor the sum of $50,000 in cash, on the express condition that the complainant, W. N. Ewing, should be the manager of the company's ranch and the cattle and other properties thereon for a period of five years, and that, in accordance with said condition of said purchase of the stock aforesaid, the defend-

ant company, on the 4th of March, 1885, entered into a written contract with said W. N. Ewing in substance as follows:

(Here follows copy of contract.)

And that thereupon the complainants Coburn & Ewing took said stock and paid to said company the sum of $50,000, and the complainant, W. N. Ewing, immediately entered upon the duties as said manager and diligently and faithfully continued and con-
187 tinues to discharge the same with skill and advantage to said company; that on the 7th day of September, 1885, the defendant company, colluding and conspiring with the other defendant (Geo. D. Fisher) to wrong, cheat, and defraud complainants, and especially the complainant W. N. Ewing, issued to the plaintiff Ewing the following notice, to wit:

DEAR SIR: I am instructed to inform you that in consequence of the facts which have come to the knowledge of the board connected with your purchase of the Cedar Valley property from William B. Munson the directors have decided to cancel your appointment as manager, and that your duties will terminate at the date of the delivery of this letter to you. Mr. Fisher is authorized to take charge of all books, papers, and other property at present in your hands, and I am requested that you hand them over to him accordingly.

Yours truly, THOS. E. WEBB, *Secretary.*

The bill charges that all the members of the board of directors of the defendant company and all of its officers except complainant Ewing are residents of Great Britain and wholly unacquainted with the business of managing such ranch property.

That the complainant Ewing has thorough knowledge of and skill in conducting said business, and to remove him would work irreparable injury; that said Geo. Dixon Fisher has demanded of complainant Ewing the turning over to him, said Fisher, of all of said company's property and is claiming to be the only legally authorized agent in America; that said Fisher is wholly unacquainted with the cattle business, &c., with full statement of damage likely to result to complainants if said Ewing was compelled now to
188 surrender the control as manager of the company's property aforesaid, and praying for an injunction to restrain the defendants from interfering with said Ewing in the performance of his duties as manager, and praying that on final hearing the defendant company be required to carry out specifically its said contract with said Ewing as manager for five years from the 1st January, 1885.

On the 13th of Oct. this bill was presented to the judge of the State district court of Oldham county without notice to defendants and the order for injunction, as prayed for, obtained, and on the 16th of October the bill was filed in the State court and along with it the complainants' bond for injunction in the sum of $500, as required by the order, and the injunction was thereupon issued.

On the 11th of November the defendants filed in said State court

their petition to remove said cause to this court and tendered a bond in the sum of two hundred and fifty dollars, payable to J. M. Coburn and W. N. Ewing, and conditioned that "if the petitioners shall enter in the said circuit court of the United States on the first day of its next session a copy of the process against them and of all the proceedings in said suit, then this obligation shall be void," &c.

The next session of the circuit court in this district after the tender of said petition and bond began at Waco on the 19th of November, and on the 21st of November the transcript of the record was filed in this court, being then in sessions there. The defendants thereupon, on the 23rd Nov., after being advised of the time when it could be heard, gave notice to the solicitors of complainants

189 that on the 4th day of Dec. the defendants would apply to one of the judges of this court, at Graham, for a dissolution of the injunction, &c. The complainants insist that the notice was too short, and urge that they were unable to meet the motion with proper preparations; that the principal solicitor is engaged in other causes in other courts and cannot attend before the 20th instant, and that the complainant, W. N. Ewing, is in the ranch country and his solicitors and co-complainant have not been able to reach him by wire or otherwise; that by the 20th they expect to be able to obtain affidavits supporting all the allegations of their bill as to the management of said Ewing, &c.

Having heard the argument of solicitors for complainant, and for the defendants, I am of opinion that the notice was sufficient, and that the complainants should be prepared to support their bill for injunction in opposition to the motion now.

The complainants present a motion to remand this cause to the State court, only one ground of which I deem it necessary to notice, viz., because the bond is not conditioned to well and truly pay all costs that may be awarded by the circuit court of the United States if said court shall hold that said suit was wrongfully or improperly removed thereto.

The petition for removal shows all the jurisdictional facts to warrant the removal. The manner of removal, the amount or form of the bond, is not a matter of substance affecting the jurisdiction of this court, and may be waived or, if insisted on, may be cured by amendment. (Ayres *vs.* Watson, 113 U. S., 594.)

The motion to remand does not, in my opinion, present such matter as would arrest my hearing the motion to dissolve the injunction.

The motion to dissolve the injunction presents numerous grounds on which the dissolution is asked, some of which are:

1. That all of the equities of the bill are denied by the

190 answer under oath.

3. That the contract for the employment of said Ewing, as set out in the bill, is not capable of being enforced either affirmatively by decree for its specific performance or negatively by way of injunction to restrain its violation.

4. That the complainants have had adequate remedy at law.

12. That the complainant Ewing was removed from his position

as manager of the respondent company for good and sufficient cause.

The answer of respondents admits that complainants proposed to purchase shares of respondent company's stock on condition of W. N. Ewing being manager for five years, but denies that said proposition was accepted, and alleges, on the contrary, that it was expressly and promptly rejected, and an unconditional subscription made instead thereof. It denies that the members of the board of directors and other officers of the respondent company are wholly ignorant of and incompetent to conduct with skill the business of said company's cattle ranch interests. It charges that said W. N. Ewing was discharged as manager of said ranch interests for good cause, namely, that before the organization of respondent company the promoters of said company employed complainants to purchase said ranch and the cattle and other personal property thereon, and that said complainants accepted said employment and undertook to represent said promoters, and did represent them at first and afterwards the company in the purchase of said property, the complainant Ewing being the active party in said matters, and did conceal from said promoters and from said company the fact that said complainants had an interest in the sale of said property; that said company in August, 1885, for the first time, learned that said complain-
191 ants were acting as the agents of the seller, W. B. Munson, and were to receive and actually did receive about the sum of $40,000 out of the moneys paid by said company for said property through complainants as said company's agents, as commissions from said Munson for effecting said sale; and as soon as this was discovered said company discharged said Ewing.

The exhibits offered with the answer fully sustained the charge that complainants had said property for sale before and during the time of the negotiations by which respondent company became the owner, and that complainants did receive commissions from said Munson to the extent of about $40,000.

Having made the foregoing statement of matters presented by the record I deem it proper to add only that I am of opinion that the 1st, 3rd, 4th, and 12th grounds of the motion to dissolve, as set out above, are well taken, and that the injunction should be dissolved, and it is so ordered.

192 "EXHIBIT D."

U. S. Circuit Court for the Northern District of Texas, at Graham.

JAMES M. COBURN & W. N. EWING and COBURN & EWING
*vs.*
THE CEDAR VALLEY LAND & CATTLE COMPANY, Limited, & GEO. DIXON FISHER.

IN CHAMBERS, *December 5th*, 1885.

On this day came on to be heard the motion filed herein by the

defendants to dissolve the injunction herein sued out by the plaintiffs in the above-styled cause.

The court, after hearing the motion and the arguments of counsel thereon, is of the opinion that the law is for the defendants, to wit, The Cedar Valley Land & Cattle Company, Limited, and George Dixon Fisher. It is therefore ordered, adjudged, and decreed by the court that the injunction herein sued out by the plaintiffs, James M. Coburn & W. N. Ewing and Coburn & Ewing —, and the same is hereby, dissolved in whole and held for naught, and that the restraint upon the defendants, to wit, The Cedar Valley Land & Cattle Company, Limited, and George Dixon Fisher, by virtue of said writ of injunction, be, and the same is hereby, removed and released.

A. P. McCORMICK, *Judge.*

193 "EXHIBIT E."

U. S. Circuit Court for the Northern Dist. of Texas, at Graham.

JAMES M. COBURN & W. N. EWING & COBURN & EWING
*vs.*
THE CEDAR VALLEY LAND & CATTLE CO., LIMITED, & GEORGE DIXON FISHER.

IN CHAMBERS, *December 5th*, 1885.

On this day comes on to be heard the motion filed herein by the defendants to dissolve the injunction herein sued out by the plaintiffs in the above-styled cause.

The court, after hearing the motion and the arguments of counsel thereon, is of the opinion that the law is for the defendants, to wit, The Cedar Valley Land and Cattle Company, Limited, and George Dixon Fisher. It is therefore ordered, adjudged, and decreed by the court that the injunction herein sued out by the plaintiffs, James M. Coburn & W. N. Ewing & Coburn & Ewing, be, and the same is hereby, dissolved in whole and held for naught, and that the restraint upon the defendants, to wit, The Cedar Valley Land & Cattle Co., Limited, & George Dixon Fisher, by virtue of said writ of injunction, be, and the same is hereby, removed and released.

A. P. McCORMICK, *Judge.*

194 The affidavit of W. B. Munson, filed on the 31st day of December 1885, is in words and figures as follows, to wit:

In the Circuit Court of the United States, Northern District of Texas.

JAMES M. COBURN & W. N. EWING, Partners as Coburn & Ewing, and W. N. EWING
*vs.*
THE CEDAR VALLEY LAND & CATTLE CO'Y, Limited.

W. B. Munson, being duly sworn, on his oath deposes and says that he resides in Denison, Texas, and that he was formerly owner of a ranch situated in the counties of Randall and Deaf Smith, in

the State of Texas, now belonging to the Cedar Valley Land and Cattle Co., Limited, and that he sold said ranch and a herd of cattle, &c., belonging thereto to the said company, through Coburn & Ewing, of Kansas City, Missouri, about May, 1884. Affiant met one Burnett in Mobeetie or Clarenden, Texas, and then had an interview with him concerning the sale of said ranch, and was asked by him to send fuller details to him at Kansas City, in care of Coburn & Ewing.

When affiant next visited Kansas City he called upon Coburn & Ewing, when they informed him that what business was done must be done through them, in regard to sale of ranch, by Burnett.

Thereupon an agreement was entered into between affiant & said Coburn & Ewing that the price of the property was to be $750,000, and that if they sold it for him he was to pay them a commission of five per cent. and take $50,000 stock in the company to be formed.

About the latter part of December, 1884, Ewing came to see affiant at Denison, and he then told affiant that the company was
195 formed, and that he was ready to buy the ranch, if they could come to terms, but unless he (that is, the affiant) would get a good commission he would not buy the ranch. Said Ewing then told affiant that he had the offer of another ranch, and unless affiant made it worth his while, he would buy the other ranch for the company. After considerable negotiations it was finally agreed that affiants would pay Coburn & Ewing a commission of $40,000; that affiant would take a certain building in Kansas City in lieu of $50,000 of stock in said company; that the cattle, except bulls, were to be put in at $18.50 per head, the horses at $50.00 per head, and the land at $2.00 per acre.

The said Ewing went to Dallas to have a contract drawn up and cable company for the money, and from Dallas wired affiant to come to that place, sign his contract, & get his money.

Affiant went to Dallas and on reading the contract found therein a clause requiring him to pay $25,000 on account of expense of promoting the company, and he refused to sign it on the ground that he did not so understand the agreement. This caused a delay in the negotiations, and the dispute was finally settled by Ewing allowing affiant to charge 75 per cent. of the bulls $60.00 per head in place of $18.50, and give the company $17,500 for promotion money.

Affiant agreed with Ewing to take certain real estate in Kansas City at an agreed valuation of $75,000 in place of cash. Affiant then believed and still believes that was more than the real estate was worth.

The reason the affiant took the real estate at this valuation was that he, affiant, wished to be relieved from his obligation to take stock in the company, & Ewing agreed to take said stock off his hands if he would take said real estate at said valuation. Af-
196 fiant states that when the first payment of $100,000 was made to him on account of said sale affiant received the whole sum from Ewing and immediately paid by Ewing, on New York, $10,000; at said time gave to said Ewing an agreement promising to pay Coburn & Ewing $30,000 out of subsequent payments.

Affiant says that the second payment was made to him about May 5th, 1885, by Coburn & Ewing, by placing to his credits the amount then due, less $15,000, with the First National Bank of Commerce of New York, and that the third payment was made to him about 18th June, 1885, by Coburn & Ewing, who deducted therefrom the remaining sum of $15,000 of commissions and $60,000 for the real estate, being subject to a lien of $15,000, making the valuation thereof $75,000.

Affiant states that the full sum of $40,000 was paid to said Coburn & Ewing as commissions in accordance with the agreement hereinbefore set forth; & further this affiant saith not.

W. B. MUNSON.

Subscribed & sworn to before me this 24th day of November, A. D. 1885.

Witness my hand and official seal.

[SEAL.] J. T. MUNSON.
*Notary Public, Grayson Co., Texas.*

Afterwards, on the 4th day of January, A. D. 1886, the following entry appears of record in this cause, to wit:

CEDAR VALLEY LAND & CATTLE CO.
*against*
COBURN & EWING.

The following order was this day filed and ordered to be recorded, to wit:

197 In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

THE CEDAR VALLEY LAND & CATTLE COMPANY, Limited,
*vs.*
COBURN & EWING.
Case No. 1070. Cross-Bill.

On application of complainant in above-entitled cause it appears that the answer of defendants to the cross-bill of complainants was filed on Dec. 16, 1885, & that said answer was sent to Leavenworth, Kansas, upon the order of Judge Brewer, & for that reason complainant has not had time to examine same and plead thereto. It is ordered that said complainant be allowed to file exceptions thereto for impertinence in or before the rule day in February, 1886, and that the time for filing exceptions thereto for insufficiency be extended to the rule day in March, 1886, or the complainant, at its option, may file a replication to said answer on or before the rule day in March, 1886.

A. KREKEL, *Judge.*

Leave to file exception extended to 1st Monday in March & April, 1886.

A. KREKEL, *Judge.*

198 On the 7th day of January, A. D. 1886, the following affidavit was filed:

In the Circuit Court of the United States in and for the Western Division of the Western District of Missouri.

COBURN & EWING and W. N. EWING, Plaintiffs,
*versus*
THE CEDAR VALLEY LAND AND CATTLE COMPANY (Limited) and GEORGE D. FISHER, Defendants. } Affidavit.

STATE OF MISSOURI,
*County of Jackson,* } *ss:*

J. M. COBURN and W. N. EWING, each being first sworn, on their respective oaths severally depose and say that they are the plaintiffs in the above action; that previous to July 3d, 1884, George Burnett had visited America and had personally examined Munson's ranch; that upon his return to England he wrote to these affiants two letters, copies of which are hereto attached, marked Exhibit "A" and Exhibit "B," and made a part of this affidavit, and the originals of which are now in our possession and are subject to the inspection of both court and opposite counsel.

These affiants respectfully call the attention of the court to the statement of the said Burnett that he knew that these affiants had arranged for a commission with Munson; that the
199 business was to come through him; that he was bound to join the concern; that he was to have a share of the commission; that this affiant, Ewing, was to make a report on the ranch; that if bought, it was then in contemplation that affiant Ewing was to be the manager, and these affiants were then instructed to make a hard bargain with Munson, were to buy the ranch at its lowest terms, and with the knowledge on the part of Burnett that Munson was to pay the commission, and in the light of these letters these affiants ask that other and subsequent letters from said Burnett and also the cablegram directing these affiants to buy the ranch at the lowest terms may be better interpreted and understood.

These affiants further state that they had no knowledge at the time of the receipt of these letters who would be the purchasers of said ranch, other than that Burnett was using and intending to use his exertions to obtain a purchaser by means of an association, a syndicate, or company.

That in obedience to the direction of said letters affiant Ewing made a personal inspection of the ranch and forwarded to the said Burnett his written report of the same, and which report or a printed copy thereof is now on file with the affidavits in this case, and which report, these affiants say, was in all respects a truthful and correct one.

That afterwards, on December 5th, 1884, these affiants received another letter from the said Burnett, a copy of which is hereto attached, marked Exhibit "C," and made a part of this affidavit, the

original of which is also subject to the inspection of both court and opposite counsel.

These affiants further say that the contract between themselves and Burnett in relation to the purchase of Munson's ranch is disclosed and stated in "Exhibit A," and which was and is in substance that Munson was to pay the commission to these affiants; and these affiants again call the attention of the court to Burnett's letter of December 5th, 1884, and who, with a knowledge that Munson is to pay them, again repeats the injunction to buy on the lowest terms and as if affiants were buying for themselves, and from which last-mentioned letter it will be seen that Burnett himself did not then know with definiteness the shape the enterprise was to take or the parties to be connected therewith.

That these affiants, in good faith, from time to time carried out and performed all the commands of the said Burnett, and the said Burnett at all times knew all that these affiants at any time did; that on or about December 22d, 1884, the said Burnett sent a cablegram to these affiants, which was received by them, and a copy of which is hereto attached, marked "Exhibit D," and made a part of this affidavit, directing them to buy the ranch on the very lowest terms; that the same was signed by him; and these affiants call the attention of the court to the affidavits on file made by the directors of the company, in which they state that the very form of the cablegram was adopted by the company and directed to be sent, yet it was sent in Burnett's name to these affiants in further explanation of Burnett's letter to them that the business was to come through him, and as a circumstance corroborating the statement of these affiants that Burnett was the one person put forward by his associates, whoever they might be, and, as a promoter, incorporator, director, and stockholder, to make and conclude the purchase of the Munson ranch.

These affiants further state that all the subsequent directions of the said Burnett to buy the ranch at the very lowest terms and as if these affiants were purchasing for themselves could not emphasize the original direction given them in his first letter to make a hard bargain with Munson, and at the same time providing for a commission to be paid them by Munson.

These affiants further state that George Burnett was the one person in England who first suggested the floating of a company to be composed as events might fashion, was one of the original promoters, was the promoter and managing director who had charge, and we might say the entire charge, of the purchase of the Munson ranch for the expected company, and who knew just exactly how we were to be paid; and we further call the court's attention that in his first letters it was in expectation that either Mr. Coburn or Mr. Ewing would likely be made manager of the ranch, and in the prospectuses on file in this case issued by the company such management was hinted at long before he was appointed, and which we call the court's attention to for the purpose of showing that it was not a thing decided upon at the time of the appointment.

These affiants call the attention of the court to the reiteration of

Burnett of his first command to make a hard bargain with Munson to buy the ranch on the very lowest terms, and which we ask the court to consider in the light that our commissions had already been agreed upon by Burnett.

These affiants further state that Burnett not only knew personally this ranch, of its details, character of the cattle, the situation and values of the lands, but in substance knew all the facts embraced in Ewing's report by personal inspection of the
202 ranch when in America, and we call the attention of the court to the different prospectuses on file showing the statements of the company as to the ranch and the exceedingly advantageous terms upon which it was purchased; that in pursuance of Burnett's direction the trade was closed with Munson, and these affiants were paid the commissions agreed upon by Munson to be paid us and agreed upon by Burnett. At the time of making the contract with Munson he declined to pay the $25,000 promotion money, and affiant Ewing ascertained that it would be impossible to close the trade with him for the cattle at $18.50 per head and obtain from him any portion of $25,000 as promotion money, and that for the purpose of obtaining the same he thereupon agreed with Munson that he should pay $60 for three-fourths of the bulls, that being the proportion of high-grade bulls in his herd and actually worth the money, and it was upon this that Munson would consent to pay any proportion of such promotion fee; that at the time affiant Ewing consented to this as far as he could, and immediately thereon wrote to the company making a full and complete explanation of everything that was done in that respect, and the company had a full and complete knowledge of the entire transaction, and that it was impossible to get the entire amount of promotion money which the company wanted even with this arrangement, and that the arrangement made with Ewing only produced $17,500 promotion money, and every dollar of which inured to the benefit of the company, and in this connection these affiants, knowing that Burnett understood the entire transaction with them, and that he was managing the affair across the water, did as they were directed to by Burnett—made the contract in the name of W. N. Ewing and upon the terms known to Burnett, and the affiant Ewing, at his
203 request, made a declaration of trust to the Cedar Valley Land and Cattle Co., Limited, which at that time was not in existence.

These affiants further state that the purchase made by Ewing of the ranch and upon the exact terms of which the company obtained it and which was known by Burnett was an exceedingly great bargain for the company, and for a sum in the neighborhood of $100,000 less than its actual value, *and* as will be seen by reference to the prospectuses of the company now on file with the affidavits in this action.

These affiants further state that at about the time the contract was made there was forwarded to these affiants from Mr. Stewart, a member of the board, a statement showing the prices at which other cattle ranches had been purchased and prices that had been paid for other ranches, a copy of which statement is hereto attached,

marked "Exhibit E," and which, as these affiants believe, shows the great disparity of price at which the Munson ranch was obtained in comparison with the prices paid for other cattle ranches in America.

These affiants further state that the entire amount of their commissions received from Munson was the sum of $40,000, and which Munson had before that time agreed to pay; that for the purpose of bringing Munson down in his price when affiant Ewing went there to purchase the ranch he followed the direction of Burnett and told Munson that he had also another ranch in view, as appears from Munson's affidavit, and this was a lever that helped bring Munson to terms.

These affiants further state that neither of these affiants were ever promoters of the company; never signed any of its
204 preliminary papers; never signed its articles of association, nor in any other way or manner did either of them have any connection or privity with the company until the 4th day of March, 1885, when they became subscribers to 2,000 shares of stock, and that they made such subscription as they have before stated upon the conditions that Ewing should be made manager, and in this regard we call attention of the court to the prospectuses of the company, in which they state in substance that it is expected to get a certain experienced person in America to manage their affairs, and which these affiants allege was none other than affiant Ewing who is alluded to; that the statement made by the directors of the company that the proposition of Ewing to become manager was rejected by the board was at all times before such affidavits were made unknown to these affiants, and the proposition to subscribe was made on the ground, as we have before stated, that Ewing should be made manager, and we call in support of our statements the fact that the stock subscription was made and his appointment as manager was made following each other, and that the records of the company, as these affiants believe, will not show any adverse action of any kind taken on the proposition made by affiant Ewing.

These affiants further state that it was expected and intended that certain beef cattle should be sent to market in the fall of 1885; that they were started on the road, and after they had proceeded a short period on the journey the markets in Kansas City became so low that it was deemed advisable for the best interests of all concerned that they should be returned to the range and held for market for next year, which course was advised by other experienced cattle men.

205 These affiants further state that they are a large, if not the largest, stockholders in the company and are interested in its welfare; that they have done nothing hostile to its interests or adverse to an economical and profitable course of business in the direction of its affairs.

These affiants further state, and each speaks for himself and not for the other, that at no time has the company or any one connected therewith ever desired to know or offered to pay these affiants anything whatever for their services in purchasing said ranch.

These affiants further state that they append hereto a letter received from the company, dated September 7th, 1885, marked "Exhibit F," and in which the claim of the company that Coburn & Ewing were their agents is pressed upon the single ground that on March 4th, 1885, Ewing was made manager, and his pay was to commence from January 1st, and that from this fact he was constituted a servant of the company.

Further than this these affiants say not.

JAMES M. COBURN.
W. N. EWING.

Subscribed and sworn to before me this 5 day of January, 1886. My commission will expire Aug. 22, 1888.

[SEAL.] HENRY M. STONESTREET,
*Notary Public, Jackson Co., Mo.*

206 Via Cork. Private.

James Finlay & Co.

34 LEADENHALL STREET, LONDON, 3 *July*, 1884.

J. M. Coburn, Esq., Kansas City, Mo.

DEAR SIR: I duly received yours of the 14th June. I am sure you know that I would willingly do anything I could for you and your partner, but I do not think you should ever try to get the prairie. The direction is not good; Forbes, of course, would never get it. His name was mentioned by Mitchell, a mischief-making lawyer who was eventually put down at the meeting. Since I came here I have brought the Munson ranch before some friends, most of them directors of the Western Co. I have stipulated that except the secretary here, who is a competent man, no other employé of the Western is to have a word to say about it, especially Forbes. I wanted them to form a company without my name, but they insist on my joining, and therefore I insisted on its being placed under your management. At the moment all ranches and American schemes generally are in very bad repute, and it may be difficult to float a company, but by the time Ewing's report comes here I think things will have improved and the board will be influential. Just you and Ewing take things quietly; sooner or later you will get plenty to do. I can see some things looming in the distance already. You, I know, arranged for a commission on this transaction with Munson that, of course, you attend to with him; here we know nothing about that.

207 Now, as this business only comes through me, and as I am bound to join the concern which I did not want, I am clearly of opinion that as my partner does my work and enables me to attend to such things that £1,000 should go to him and the balance be equally divided. This I do think a very liberal arrangement. You must make a hard bargain with Munson and let the report be very minute and particular. I am to report on Ewing's capacity to do the work when the time comes. I got the parties to give up the Cresswell thing for this, which you and I agreed was much better. Get Munson's offer very distinct; you know he is

changeable. If he won't work we can get the Qui-ta-que. My wife and I go home to-morrow. We have been detained arranging this business.

Yours truly, GEO. BURNETT.

True copy of the original.
STELLA POTTER.

208 EXHIBIT B.

Via Cork. James Finlay & Co.

34 LEADENHALL STREET, LONDON, 3 *July*, 1884.

Messrs. Coburn & Ewing, Kansas City, Mo.:

DEAR SIRS: Respecting Munson's Paloduro ranch, of which I brought the particulars home, and with reference to Mr. Munson's letter to me dated May 4th and the corresponding map and statements, all of which I herewith send you, having retained copies here, some friends along with myself think it probable that if the account of the ranch can be verified and the statements made regarding it can be confirmed we may be able to float a company to purchase it. I have undertaken on your behalf that your Mr. Ewing will arrange with Mr. Munson and without delay proceed to examine the property. As in the meantime there is no company formed, I have stated that your Mr. Ewing would give his services gratuitously, being paid his expenses on the trip, and this, in consideration of the property, should the company be formed, being placed under your Mr. Ewing's management.

Land.—You will, of course, report as to the quality of the land for ranching purposes, the nature and quality of the grass, particularly as to the living water, whether the streams marked on the plan have actual water constantly in them or if they are water-courses; and, if so, how much of them are generally dry. Describe the cañons and broken ground as regards shelter in winter, and whether there is sage grass in the breaks. Say whether hay can be cut upon
209 the banks of any of the streams; and, if so, to what extent. Mention also whether there are any damp hollows on the upper flats where tanks could be efficiently constructed.

Corrals.—Report on the number and condition of the corrals, and whether there is sufficient hard wood on the property to construct more or make fence posts. I infer there must be, from the name, Paloduro.

Fences.—Mention the condition of the fences now existing and the necessity, if any, that may exist for their extension and how much might be wanted.

Cattle.—The 5,000 steers I know about, as they are in the Dixon Creek pasture, but report particularly on the quality of the cattle on the ranch, the quality and age of the cows, and particularly the quality of the bulls on the range; how many have been recently put on, their age, and general condition; also give idea as to there being a sufficient number. Report what proportion of the herd you con-

sider pure Texan and what you consider graded; also general size of the cows, and particularly arrange for strict counting of the cattle on the range. Report generally on the horses, wagons, implements, and houses, if any; also where the headquarter ranch is. Be careful to note the quantity of loco, and, in short, generally on the ranch and its value.

Regarding Munson's valuation, the price put on the freehold land is too high, as well as on the land Munson controls. There must be a substantial reduction on these items and generally on the price, considering the herd of cattle. We propose to form the company by calling up half the £10 shares and getting money on the debentures on the other half. There must be included in the price a sum of $25,000 to be paid here for getting the company floated, and we expect that Munson may take one-third the price in shares and
210 debentures. As the money can only be called up from shareholders at intervals of time, the length of time for payment to Munson was to be very liberal.

Yours truly, GEO. BURNETT.

Enclosures:
Letter from Munson to me 21st May.
Map of property.
Statement of expected return.

True copy of original.
STELLA POTTER.

EXHIBIT "C."

Via Cork. W. N. Ewing, Esq.

LONDON, 5 *Decem.*, 1884.

Messrs. Coburn & Ewing, Kansas City, Mo.

DEAR SIRS: I have now to write especially in connection with your letter to me of the 22nd October regarding the Munson ranch.

Col. Stewart has arrived, and all the party who are desirous of forming a company to buy this property are duly impressed with the desirability of acquiring it, and I enclose a prospectus of our proposed company, so that you can understand the basis on which we are proceeding. You cannot, I feel sure, understand the difficulty of inducing any one to invest money in anything American at present. The Cresswell is nominally carried through, but not by the public, but by the individually very large amounts which Mr. McKenzie's friends have invested in it.

We quite recognize how important it is with a man like
211 Munson that you should be able to pay him in cash so as to reduce the price to the lowest possible point. You will notice that we have based the price to be paid him for the property on your ideas as expressed in your letter of the 22nd.

We have now placed the company before the public and are in hopes that we will get the capital wanted, and in the event of our

doing so I want you to be prepared, when we ascertain the result, for a cable which we will send as soon after the 18th current as we can.

You will then be expected to make a very minute and firm bargain with Munson, allowing no point for dubiety and no loop-hole which may give rise to dispute, having everything in writing. Make the price as low as you possibly can and the terms of payment as distant as possible, as we have to take time with the instalments on the money subscribed—gathered in—and we have to get the debenture money, which we cannot advertise for until we proceed — allocate the shares. Let the various payments, therefore, be as protracted as possible. Stipulate that a very sufficient margin shall be left unpaid until the cattle are all counted and the titles to the land certified as correct and the leases be found in order as described.

As it is possible that we might not be able even to have the whole amount ready for payment on the specified dates, you must provide in the bargain for such contingency, stipulating that we do not in such a case forfeit any sums previously paid, and let any interest to be paid be as low as you possibly can—not exceeding, I should think, six per cent.

Your own intelligence will suggest anything I have omitted to mention, and you will act as if the whole transaction was on your own account.

212 Yours truly, GEO. BURNETT.

True copy of the original.
STELLA POTTER.

"EXHIBIT D."

LONDON, *Dec.* 22, 1884.

To Cockburn, Kans. City, Mo.:

Buy ranch, very lowest terms not exceeding sum mentioned your letter twenty-second October and conditions my letters fifth and sixth December. Cable Impulsive, London.

BURNETT.

True copy of the original.
STELLA POTTER.

213 "EXHIBIT E."

Nebraska, October, 1882:

No freehold land mentioned; "stated to be" 18,319 cattle, of which 575 are bulls, 3,500 calves, 150 horses.

Calves not thrown in; $542,000, or very nearly $25 a head, including calves; ⅓ of surplus profits over 10% a salary to Wm. Mayer, with compensation of £10,000 if engagement is broken.

Cattle Ranch & Freehold Land Co. of Texas :

17,000 acres freehold, 20 per acre ; horned cattle, £6 per head delivered ; improvements, £1,000. Calves not thrown in.

New United States Cattle Ranch Co., 3rd Jan., 1884 :

No amount of freehold land mentioned. Books show 9,000 head of cattle, but the vendors only guarantee to deliver 6,000 head, of which 125 are bulls and 200 horses. Company to collect remaining stock at own expense ; $410,000. No mention of calves thrown in.

Hansford, 23 Nov., 1882 :

"About" 14,000 acres freehold.
"About" 35,000 cattle.
214 " 650 bulls.
" 420 horses.
8 mules. Improvements.

No mention of calves thrown in ; $1,000,000.00.

Consolidated end of 1883 ; contract to take effect 1 March :

100,000 acres freehold, $2.50 ; 74,500 cattle, $25 ; 500 stock horses, $40 ; 500 saddle horses, $40 ; 2,000 stock hogs, $4 ; 1,000 bulls, $62.50 ; improvements, $9,500.

The calves of 1883 are not thrown in. The calf crop of 1884 is thrown in, but as the calves *was* not in existence when the contract took effect it would indeed have been difficult to count or pay for them.

Dakota, 1st March, 1883 ; contract dated 21 Feb., 1883 :

No freehold land stated. Calves of 1882 not thrown — ; "stated" to be "about 17,000 head," of which 7,500 are cows, with the previous year's branding of 4,000 calves, £108,125 ; also a bonus of £5,000 to Mr. Freiscu, besides ⅛ of improvement or increase of herd in 1888 and ⅛ of annual profits divided among shareholders for past five years. Price per head of estimated numbers, including calves of 1882, about $31.00.

Espuela, 11th December, 1884 :

414,500 acres freehold, $2½ per acre ; 60,000 cattle to be counted, $25 per head. Calves not to be counted. Purchasers to pay
215 half expense of fencing necessary for counting ; 500 horses, $50. Equipments c. $25,000.

Prairie Co. :

Bought in 1882 the ranch between J. J. and Crosswell, 7,400 head, £38,665. No mention of calves thrown in. No amount of freehold mentioned.

Swan Co.; contract took effect 31 Dec., 1882:

| | |
|---|---|
| No amount of freehold mentioned. 87,507 cattle at $25; 1,660 bulls at $75; 883 horses & mules, $50; ranches, fencing, &c., £41,237. | No mention of calves thrown in, the agreements being dated 29th Nov., 1882; 13 Feb., 1883, and 9th March, 1883. |

Northfields Co., April, 1883; contracted for a range:

No amount of freehold stated, on which there were only about £4,500 worth of cattle, houses, implements, etc., giving £30,000 in deferred shares to vendors for range rights, and one-fourth of the capital allotted from time to time & beyond £30,000. Cattle, etc., to be valued and paid for besides. No mention of calves being thrown in.

Deer Trail, 23 Jan., 1883:

| | |
|---|---|
| 100,000 acres freehold. Range rights, £100,000; 36,000 head of cattle, 300 bulls, 260 horses. | Calves thrown in—£220,000, or upwards of £6 per head. |

216 Freehold Ranch & Cattle Co., 1st Jan., 1883:

| | |
|---|---|
| 162,681 acres freehold; 13,265 cattle, 291 bulls, "according to stock book;" 563 horses; £160,000. | No mention of calves thrown in. |

Western American, 7th Sept., 1882:

| | |
|---|---|
| No freehold land stated; 2,500 head of cattle, 32 horses. | No mention of calves thrown in, for which the vendors — £20,000 in fully paid-up deferred shares, the deferred shareholders receiving, in certain contingencies, $\frac{1}{3}$ of the total assets of the company if wound up. |

American Cattle Co., 11 Nov., 1882:

| | |
|---|---|
| No freehold land stated; 23,000 to 23,500 cattle, 200 bulls, 550 horses. | Calves thrown in; £200,000 less £50,000 receivable from sales, or £150,000, which is at the rate of £6 5*s.* per head for 24,000 head. |
| 217 | NOTE.—This ranch is in Nebraska, and is presumably more a feeding ground than a breeding herd. No probable number of calves is stated, and $\frac{2}{3}$ of surplus profits beyond £20,000 for ten years; vendors to manage the property. |

Nevada, 19 October, 1883:

| | |
|---|---|
| 30,000 acres freehold; 6,000 cattle, 1,500 calves, 500 horses, 125 hogs. | Calves not thrown in; £68,400 and £5,500 as bonus to Mr. Hammond. |

Pastoral, March, 1884; agreement dated 15 Feb., 1884:

| | |
|---|---|
| 20,000 acres freehold land, 9*s.* 6*d.* per acre; 35,000 cattle, 460 bulls, 400 saddle horses, 300 breeding horses. | To be delivered — counted at $28.60 per head; calves to be thrown in. |

NOTE.—Mr. Lawson recommended the Co. to accept and pay for the cattle as 34,000. In the result 28,615 were actually delivered.

Western, June, 1882:

| | |
|---|---|
| About 1,200 acres freehold; 21,031 head of cattle. | $520,400, besides vendors' right, subsequently redeemed for £16,200, after a payment of £ — in 1882. |

218 NOTE.—The above price of $520,400 shows an average of $24.74 per head; calf brand of 1882 estimated at 6,000.

United States Cattle Ranch Co., 1 Dec., 1882:

| | |
|---|---|
| No freehold land stated; 11,000 cattle of all ages, 150 bulls | Calves not thrown in; £60,000 in cash, 46,000 in deferred shares; vendors to manage ranch for five years at 7% p. head p. annum. |

Cattle Ranch Land Co.:

Paid £60,000 for range rights.

True copy of the original.
WM. F. DAWS.

219 The Cedar Valley Land and Cattle Company, Limited, Morgate street chambers (30*a* Morgate street).

LONDON, E. C., 7*th Sept.*, 1885.

DEAR SIR: I am to acknowledge the receipt of your letter of 24th ulto. confirming your cablegram of the 17th ulto.

The chairman, who is in London on the company's business, also received to-day your letter of the 22nd ulto., in which you offer an explanation of the circumstances under which a sum of money was accepted by you from Mr. W. B. Munson by way of commission on the purchase of this ranch by the Cedar Valley Company.

I am to inform you that at a meeting held here this day to consider your letter the board were of opinion that your explanation of the circumstances is not in any degree satisfactory. Your engagement as manager of the company was dated, at your own sug-

gestion and request, from 1st January, 1885, and this fact constituted you a servant of the company, in which capacity it was a distinct breach of trust for you to accept any commission whatever, at all events without affording your employers full information in regard to the offer of such commission and its amount. This would have given them the opportunity of deciding whether they would have completed the purchase for which they were not paying the lowest price, inasmuch as it was saddled with a very large commission to your firm. As you were a servant of the company, you were bound in law as well as in honor to make over to the company all sums received by way of commission; but the fact of these pay-
220 ments was throughout studiously concealed from the directors.

The terms of your letter of the 8th January, 1885, page 4, appear unmistakably intended to give the directors the impression that you were receiving no commission on the transaction, and the circumstances under which you allowed Munson to make a surcharge upon 75 per cent. of the bulls show clearly that you were dealing improperly with the interests intrusted to your charge.

These facts, as well as all the circumstances connected with the receipt of the various sums by you, as vouched for by Mr. Munson and corroborated by another influential and credible witness, were laid before the lawyers in America, who advised that there would be no difficulty in obtaining a judgment against you there. The case, including your letter of the 22nd ultimo, has also been laid fully before the solicitors and counsel of the company in England, and a copy of the solicitors' opinion is enclosed herewith for your perusal. In pursuance of their advice I am instructed by the board to call upon you to refund the sum of $73,924, received by you in various ways by way of commission, videlicet:

(1.) $10,000 out of the first payment of $100,000 remitted 30th Dec., 1884.

(2.) $15,000 out of the payment made on 1st May for the land.

(3.) $15,000 out of payment made on June 20th for cattle.

(4.) $15,000, being excess of price paid by Munson to your firm beyond the value of a property purchased by him from you. Mr. Munson states that he is willing to surrender this property for $60,000, and that he knew he was paying $15,000 in excess of its value, but that he preferred paying such excess
221 rather than take $50,000 in shares of a company to be managed by Mr. Ewing, whose ability to manage it and whose honesty he equally doubted.

$55,000

(5.) 18,924, being difference of $41.50 upon 75 per cent. of the bulls as originally agreed on. Mr. Munson had originally agreed to give a rebate of $25,000 to assist in defraying the preliminary expenses of the company, as stated in your letter of 8th January. Mr. Munson states, however, that in consequence of the large sums to be paid to your firm by way of commission he could only consent, at the time of

signing the formal contract, to allow to the company the sum of $17,500 by way of rebate, and that in order to recoup him in this sum you allowed him to charge $60 in lieu of $18.50 for 75 per cent. of all the bulls, thus entailing upon the company the loss above stated.

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$73,924

This sum is to be paid to Mr. Fisher, who holds a power of attorney authorizing him to act for the company in all matters, and whose discharge of the claim shall be your sufficient receipt. In the event of your delaying to do so Mr. Fisher is empowered to institute an action at law against you in the American courts for the recovery of the money; and in the meantime the directors, in the exercise of the powers conferred upon them by the 31st article of association, will enforce a lien upon the 2,000 shares held by yourself and your partner, and will decline to register the transfer of the
222 whole or any part of them.

Yours truly, THOMAS E. WEBB, *Secretary.*

W. N. Ewing, Esq., Messrs Coburn & Ewing, Kansas City, Mo.

True copy of original.
S. E. POTTER.

223 The following affidavit was also filed on the 7th day of January, 1886:

In the Circuit Court of the United States, Western Division of the Western District of Missouri.

JAMES M. COBURN *et al.*, Pl'ffs,
*vs.*
THE CEDAR VALLEY LAND & CATTLE COMPANY *et al.*, Def'ts.

THOMAS T. MCGEE, being duly sworn, upon his oath says that he is a member of the firm of Moody & McGee and engaged in the business of handling cattle in the State of Texas, and during the present year has been familiar with the business of handling, shipping, and selling such cattle on the market; that in the fall of 1885 from his ranch in the State of Texas he brought up to the railroad thirteen hundred head and shipped them to market, and that from the condition of the market as it has been all during the last fall it would have been better to have retained said cattle upon the ranch, and had he known the prices that would have been realized therefor he would have preferred to have had said cattle driven back again to the ranch in Texas. Affiant says that he knows of his personal knowledge of about two thousand head of cattle that were driven by the American Pastoral Company from their ranch in the State of Texas, which is situated within about a hundred miles of the ranch of the Cedar Valley Land & Cattle Company, to Dodge City, Kansas, and which was in the past fall, and, finding the condition of the

market, the owners returned then again to their ranch in the State of Texas. This was in the latter part of October or the first of November, 1885. Affiant further says that, as a practical man,
224 he is satisfied that the move of W. N. Ewing in causing the cattle to be returned to the ranch which were collected by the Cedar Valley Land & Cattle Company and started to be driven was a wise move and to the best interests of said company. Affiant further says that he has no interests whatever in this controversy.

TOM T. McGEE.

Subscribed and sworn to before me, in Kansas City, Jackson county, Missouri, on this 1st day of January, 1886.

[SEAL.] HENRY M. STONESTREET,
*Notary Public, Jackson Co., Mo.*

My commission will expire Aug. 22, 1888.

225 The following affidavit was also filed on the 7th day of January, 1886:

In the Circuit Court of the United States, Western Division of the Western District of Missouri.

JAMES M. COBURN *et al.*, Pl'ffs,
*vs.*
THE CEDAR VALLEY LAND AND CATTLE COMPANY *et al.*, Def'ts.

R. G. HEAD, being duly sworn, upon his oath says that he is a resident of Trinidad, Colo.; that he has for twenty years been connected with the cattle business; for near three years past up to the first of December was general manager of the Prairie Cattle Company, Limited; the said company is believed to own over 100,000 head of cattle; that he has been familiar with the business of handling, shipping, and selling such cattle on the market; that in consideration of the exceedingly low prices of beef during the last fall that, according to his best judgment, it would have been, if possible, for the reason above stated, the best plan for ranchmen to hold their beeves over until another year; that he is satisfied, as a practical cattle man, that such a course would seem for the best interests of any one engaged in the cattle business. Affiant further says that he has no personal interest whatever in this controversy.

R. G. HEAD.

Subscribed and sworn to before me, in Kansas City, Jackson county, Missouri, on this 2nd day of January.

My commission will expire Aug. 22, 1888.

[SEAL.] HENRY M. STONESTREET,
*Notary Public, Jackson County, Missouri.*

226 The following affidavit was also filed on the 7th day of January, 1886:

In the Circuit Court of the United States, Western Division of the Western District of Missouri.

JAMES M. COBURN *et al.*, Pl'ffs,
*vs.*
THE CEDAR VALLEY LAND & CATTLE COMPANY *et al.*, Def'ts.

SETH MABRY, being duly sworn, upon his oath says that he is a resident of Jackson county, Missouri; that for a number of years he has been engaged in the business of cattle-ranching in the State of Texas; that during the present year he has been familiar with the business of handling, selling, and shipping such cattle upon the market; that in the latter part of October Mr. Ewing informed me that he had collected and was then driving to market about two thousand head of beeves belonging to the Cedar Valley Land & Cattle Company. At his solicitation I advised him that it would be to his interest and to the interest of the company he represented to return said cattle to the ranch and turn them loose upon the range; that I have been familiar with the market since then, and I know of no reason to believe but that my advice was for the best, and that as a practical man believe the move of Mr. Ewing in turning the cattle back was to the interest of his company. Affiant further says that he has no personal interest whatever in this controversy.

SETH MABRY.

Subscribed and sworn to before me, in Kansas City, Jackson county, Missouri, on this 4 day of January, 1886.

[SEAL.] FRANK SIMPSON,
*Notary Public, Jackson County, Mo.*

My commission expires Nov. 7, 1887.

227 The following affidavit was also filed on the 7th day of January, 1886:

In the Circuit Court of the United States, Western Division of the Western District of Missouri.

JAMES M. COBURN *et al.*, Pl'ffs,
*vs.*
THE CEDAR VALLEY LAND & CATTLE COMPANY *et al.*, Def'ts.

J. K. ZIMMERMAN, being duly sworn, upon his oath says that I am a resident of Jackson county, Missouri; that for a number of years have been engaged in the business of cattle-ranching in and adjacent to the Pan Handle of Texas; that during the present year I have been familiar with the business of handling, selling, and shipping such cattle upon the market; that I had gathered 1,500 head of beeves with a view of driving and shipping them to the Kansas City market; that the condition of the market during October and November was such that I did not deem it to my interest to continue driving said cattle to the market, and after holding them some time finally concluded to turn them loose again on the range;

that I know of no reason that since then *that* my actions were not for the best. Affiant further says that in a conversation with Mr. Ewing in the latter part of October he advised Mr. Ewing what he intended to do, and also that he believed it would be to his (Mr. Ewing's) interest to return a lot of cattle which had been gathered by the Cedar Valley Land and Cattle Company and were then being driven to the market; that it would be to his interest and the company he represented to return said cattle to the ranch rather than bring them to market and sell them at the low prices then
228 being offered; that as a practical cattle man affiant further says he believed that the move of W. N. Ewing in causing cattle to be returned to the ranch which were collected and started to be driven was altogether to the best interests of the company.

Affiant further says that he has no personal interest whatever in this controversy.

J. K. ZIMMERMAN.

Subscribed and sworn to before me, in Kansas City, Jackson county, Missouri, on this 4th day of January, 1886.

My commission will expire August 22, 1888.

[SEAL.] HENRY M. STONESTREET,
*Notary Public, Jackson County, Mo.*

229 The following affidavit was also filed on the 7th day of January, 1886:

In the Circuit Court of the United States, Western Division of the Western District of Missouri.

JAMES M. COBURN *et al.*, Pl'ffs,
*vs.*
THE CEDAR VALLEY LAND & CATTLE COMPANY *et al.*, Def'ts.

N. T. EATON, being duly sworn, upon his oath says that he is a resident of Jackson county, Missouri, and that he has for 18 years been engaged in the business of cattle-ranching in the Pan Handle of Texas; that during the present year he has been familiar with the business of handling, shipping, and selling such cattle on the market; that during the fall of 1885 he brought several hundred head and shipped them to market, and that from the condition of the market as it was all during the last fall it would have been better to have retained said cattle upon his ranch, particularly a shipment which reached Kansas City about the 4th day of Nov., and had he known the prices that would have been realized therefor he would have preferred to have had said cattle driven back to the ranch in Texas. Affiant further says that as a practical man he is satisfied that the move of W. N. Ewing in causing cattle to be returned to the ranch which were collected by the Cedar Valley Land & Cattle Company and started to be driven was a wise move and altogether to the best interest of said company. Affiant further says that he has no personal interest whatever in this controversy.

N. T. EATON.

Subscribed and sworn before me, in Kansas City, Jackson county, Missouri, on this 4th day of January, 1886.

My commission will expire August 22, 1888.

[SEAL.] HENRY M. STONESTREET,
*Notary Public, Jackson County, Mo.*

230 On the 7th day of January, 1886, the following affidavit was filed:

In the Circuit Court of the United States, Western Division of the Western District of Missouri.

JAMES M. COBURN *et al.*, Pl'ffs,
*vs.*
THE CEDAR VALLEY LAND & CATTLE COMPANY *et al.*, Def'ts.

A. J. SNYDER, being duly sworn, upon his oath says that he is a resident of Jackson county, Missouri, and that he has for ten years been engaged in the business of cattle-ranching in the Pan Handle of Texas; that he is also a member of the firm of A. J. Snyder & Co., of Kansas City, Mo., commission merchants, handling cattle of every kind and description; that his firm handles and sells more Texas cattle than any concern in Kansas City, Mo., and that he has been familiar with the market for the past six months; that at repeated times during the fall of 1885 W. N. Ewing, one of the plaintiffs in the above case, called on me and asked my advice in regard to sending to market certain cattle in the T anchor brand, which brand of cattle I had heretofore sold, and was well acquainted with the class of cattle in that brand; that Mr. Ewing repeatedly called on me in the latter part of October and the first of November and informed me that he had on the way about two thousand head of beeves in the above brand of cattle that had been collected and was being driven to the railroad with a view of shipping them to the Kansas City market, and the condition of the market was such
231 at that time that I advised Mr. Ewing it would be to his interest and the interest of the company he represented to return said cattle to the ranch and turn them loose upon the range; that I have been familiar with the market every day since then, and I know no reason to believe but that my advice was for the best and the move of Mr. Ewing in turning the cattle back was to the interest of his company. Affiant further says that he is a member of the firm of Snyder and Drumm, and is at present engaged in the ranching business in the Indian Territory, which lies adjacent to the Pan Handle of Texas; that they are owners of about 15 thousand head of cattle; that during the fall of 1885 said firm bought at Kiowa about 4 or 5 thousand head of cattle, known as Texas beeves, which had been driven to this point to be shipped on the market here for fat cattle; that the condition of the market for such cattle was so very low that they did not ship them, but turned them back to their ranch and range in the Indian Territory. Affiant further says that to his personal knowledge he knows of several thousand head of

cattle besides these cattle that had been driven to the railroad for shipment and returned to the range by the owners on account of the low condition of the market.

Affiant further says that he has no personal interest whatever in this controversy.

A. J. SNIDER.

Subscribed and sworn to before me, in Kansas City, Jackson county, Missouri, on this 5th day of January, 1886.

My commission will expire August 22, 1888.

[SEAL.] HENRY M. STONESTREET,
*Notary Public, Jackson County, Mo.*

232 Afterwards, to wit, on the 9th day of January, A. D. 1886, the following entry appears of record, to wit:

JAMES M. COBURN *et al.*
*against* } 1069.
CEDAR VALLEY LAND & CATTLE CO.

and

CEDAR VALLEY LAND & CATTLE CO.
*against* } 1070.
JAMES M. COBURN *et al.*

The following order was this day filed and ordered to be recorded, to wit:

In the Circuit Court of the United States of the Western Division of the Western District of Missouri. October Term.

SATURDAY, *January* 9, 1886.

THE CEDAR VALLEY LAND AND CATTLE COMPANY, Limited, of London,
*against*
JAMES M. COBURN and WM. N. EWING

and

JAMES M. COBURN and WM. N. EWING
*against*
THE CEDAR VALLEY LAND AND CATTLE COMPANY, Limited, London.

*Decretal Order.*

This cause, coming on for hearing at this term upon the original bill of Coburn and Ewing and the cross-bill of the Cedar Valley Land and Cattle Company and the respective applications for injunction, was duly argued by counsel and submitted; whereupon the court doth order and adjudge and decree that an injunction issue against the said William N. Ewing and all and every one of the persons mentioned in the cross-bill herein as acting with or for said

233 Ewing and each of them, commanding them and each of them henceforth to desist from acting as the manager or managers

of said complainants, and from interfering with the cattle or property of said complainants, situated upon the complainants' ranch, in the counties of Deaf Smith and Randall, in the State of Texas, or elsewhere, and from making any contracts in behalf of said company, and from bringing any suit or suits based upon or for the enforcement of a certain written contract for the employment of the said William N. Ewing as manager of the complainant, which contract is dated the 4th day of March, 1885, and signed by Thomas C. Webb, secretary, and from in any manner incurring liability as manager of said complainant from selling or agreeing to sell any of the cattle or property whatsoever of the said complainant, and from exercising any control whatever over the same or any part thereof. Bond in the sum of $75,000 required. Further orders reserved.

DAVID J. BREWER,
*Circuit Judge.*

On the 13th day of January the following writ of injunction was filed:

UNITED STATES OF AMERICA, *sct:*

The President of the United States of America to William N. Ewing, his agents, partners, attorneys, and servants, Greeting:

Whereas in a certain cause now pending in the circuit court of the United States for the western division of the western district of Missouri, upon cross-bill, in which The Cedar Valley Land & Cattle Company, Limited, is complainant and you, the said Willaim N. Ewing and one James M. Coburn, are defendants, the Honor-
234 able David J. Brewer, one of the judges of said court, has made an order granting an injunction against you in accordance with the prayer of said cross-bill upon the filing of a bond, with security, to be approved as by said order specified; and whereas a bond has been filed, with security, approved as by said order required:

You are therefore commanded and enjoined, in consideration of the premises, that you, the said William N. Ewing, and all and every of the persons before named and each of you, henceforth altogether desist from acting as the manager of the said complainant and from interfering with the cattle and property of the said complainant, situated upon the complainant's ranch, in the counties of Deaf Smith and Randall, in the State of Texas, or elsewhere, and from making any contracts on behalf of the said complainant, and from bringing any suit or suits based upon or for the enforcement of a certain written contract for the employment of you, the said William N. Ewing, as manager of the complainant, which contract is dated the 4th day of March, 1885, and signed by Thomas C. Webb, secretary, and from in any manner incurring liability as manager of said complainant from selling or agreeing to sell any of the cattle or property whatsoever of the said complainant, and from exercising any control whatever over the same or any part thereof.

All of which you are strictly enjoined and commanded to observe, under the pains and penalties hence ensuing.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 13th day of January, A. D. 1886.

[SEAL.] Issued at office, in Kansas City, Mo., in said division and district, under the seal of said court, the day and year last aforesaid.

235 H. C. GEISBERG,
*Clerk of said Circuit Court,*
By JOHN M. PARRY, *D. C.*

The return on said writ is in words and figures as follows:

UNITED STATES OF AMERICA, }
*Western District of Missouri,* } *ss:*

This is to certify that I executed the within writ by delivery — a certified copy of the same to William M. Ewing, at Kansas City, Mo., this January 13th, 1886. All done in the western division of the western district of Missouri.

ELIJAH GATES,
*U. S. Marshal,*
By C. C. COLT, *Deputy.*

Marshal's fee, $2.

Afterwards, on the 8th day of February, A. D. 1886, the following entry appears of record, to wit:

CEDAR VALLEY LAND & CATTLE CO. }
*against* }
J. M. COBURN *et al.* }

This day comes complainant, by its solicitors, and files exceptions to the answer of defendants for impertinence. Thereupon the following order was filed:

J. M. COBURN & W. N. EWING, Partners under the Firm Name of Coburn & Ewing, & W. N. EWING, Plaintiffs, }
*vs.* } 1070.
THE CEDAR VALLEY LAND & CATTLE COMPANY, Limited, and GEORGE DIXON FISHER, Defendants. }

It is ordered that exceptions for impertinence to answer of Coburn & Ewing to cross-bill of Cedar Valley Land & Cattle Company, Limited, be referred to John K. Cravens, master in chancery
236 for this court, to be reported on by him to this court or filed in the clerk's office on or before Feb. 20th, 1886.

(Signed) A. KREKEL, *Judge.*

Said bill of exceptions is in words and figures as follows:

In the United States Circuit Court for the Western Division of the Western District of Missouri.

J. M. COBURN and W. N. EWING, Partners under the Firm Name of Coburn & Ewing, and W. N. EWING, Plaintiffs,
*vs.*
THE CEDAR VALLEY LAND AND CATTLE COMPANY, Limited, and GEORGE D. FISHER, Defendants.

Now comes the Cedar Valley Land and Cattle Company, Limited, and excepts to answer of Coburn & Ewing to its cross-bill of complaint filed in the above cause for impertinency in the following particulars, to wit:

I.

The allegation and charge therein that the charter, memoranda of association, and articles of association of said cattle company, as the same were subscribed and executed by its promoters and incorporators and as the same have been in force at all times since, are as shown by true copies thereof attached to said answer and marked Exhibit "A."

II.

Said exhibit and the prayer to make the same a part of said answer.

III.

The averment and charge and plea of a rule set forth in said answer to the effect that at the time of the incorporation of said Cedar Valley Land and Cattle Co., Limited, and before any stock had been subscribed to its capital stock, as a part of its charter, grant,
237 constitution, and articles of association, one certain article, as appears by reference to said Exhibit "A," which, so far as the same is pertinent (as alleged), is as follows: "92. It is expressly provided that, notwithstanding any rule of law or equity to the contrary, no contract entered into on behalf of the company with any company, corporation, or partnership of or in which any directors shall be a member or otherwise intrusted shall be avoided, nor shall any director be liable to the company for any profit realized by such contract or arrangement by reason of such director holding that office or of any fiduciary relation thereby established. No director, however, shall vote in respect of any such contract or arrangement entered into with any private partnership of or in which he shall be a member or otherwise interested, but any director may vote in respect of such contract or arrangement entered into with any company or corporation of or in which he shall be a member or otherwise interested."

IV.

The further averment and charge in said answer that the above and foregoing provision is now and at all times since the said com-

pany was incorporated has been unrepealed and in full force and effect, and that all the capital stock of said company which has been subscribed was subscribed while the same was in full force and of which each and all of said stockholders had notice at and before subscribing for stock, and especially the said Stewart, Burnett, Campbell, Graham, Kingscote, and Fisher, who aided and personally helped to make said provision a part of its charter and articles of association. In all of which particular averments and allegations in said answer the said Cedar Valley Land and Cattle Co., Limited, here and now excepts to as being impertinent, irrelevant, and
238 immaterial and no defence to its said cross-bill of complaint herein or any part thereof; wherefore it prays that all of such irrelevant, impertinent, and immaterial averments, charges, and matters be expunged, and for its costs in this behalf.

THE CEDAR VALLEY LAND AND CATTLE CO.,
By its solicitors, ADAMS & FIELD.

Afterwards, to wit, on the 25th day of February, the following entry appears of record in this cause:

JAMES M. COBURN *et al.*
*against*
CEDAR VALLEY LAND & CATTLE CO. *et al.*

This day comes John K. Cravens, master in chancery, to whom the exceptions to the cross-bill for impertinence were heretofore by order of court referred, and files his report thereon.

Said report is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

JAMES M. COBURN and WILLIAM N. EWING, Complainants, — THE CEDAR VALLEY LAND AND CATTLE CO. and GEORGE DIXON FISHER, Defendants. } No. 1070. In Equity.

To the honorable the judges of said court:

The undersigned, master in chancery to said court, to whom was referred the matter of exceptions to the answer filed by the complainants to the defendants' cross-bill, would most respectfully report that the complainants, by their solicitors, Joseph G. Waters, Esqr., and J. V. C. Karnes, Esqr., and the defendants, by their solicitor, Richard H. Field, Esqr., appeared before me at my office, in
239 Kansas City, Missouri, on Monday, February 15th, 1886, and submitted the matter of said exceptions upon cross-bill and answer thereto without argument.

Upon consideration of the cross-bill and the answer of the complainants thereto I am not satisfied that the matters in the answer embraced in exceptions Nos. 1 and 2 can, in any aspect of the con-

troversy arising upon the cross-bill and the other allegations of the answer thereto, become pertinent; yet, as those matters relate wholly to the corporate organization of defendants, The Cedar Valley Land and Cattle Co., and depend wholly upon documentary evidence within the control of the defendants if controverted by them, it is my conclusion that those matters should not be expunged, and hence overrule exceptions numbered one and two.

To which ruling defendants' solicitor notifies me that defendants except.

The specific matters embraced in exceptions three and four are wholly impertinent, and exceptions three and four are sustained.

To which ruling complainants' solicitors notify me that complainants except.

For my services in this matter I respectfully ask an allowance of twenty-five dollars.

All of which is most respectfully submitted.

JOHN K. CRAVENS,
*Master in Chancery U. S. C. C.*

February 25th, 1886.

Twenty-five dollars all'd.

A. KREKEL, *Judge.*

240 On the 19th day of June, 1886, the following entry appears of record:

CEDAR VALLEY LAND & CATTLE CO. *et al.*
*against*
JAMES M. COBURN *et al.*
} 1043 & 1070.

and

JAMES M. COBURN *et al.*
*against*
CEDAR VALLEY LAND & CATTLE CO. *et al.*
} 1069 & 1072.

This day comes the Cedar Valley Land & Cattle Co., by its solicitors, and files petition for a decree, with affidavits in support thereof.

Said petition for decree is in the words and figures following:

In the Circuit Court of the United States within and for the Western District of Missouri, Western Division.

| | | |
|---|---|---|
| CEDAR VALLEY LAND & CATTLE CO., Limited, *v.* WILLIAM N. EWING *et al.* | 1043. | Bill. |
| J. M. COBURN *et al.* *v.* CEDAR VALLEY LAND AND CATTLE CO., Limited. | 1069. | Bill. |
| CEDAR VALLEY LAND & CATTLE CO., Limited, *v.* J. M. COBURN *et al.* | 1070. | Cross-Bill. |
| COBURN & EWING *v.* CEDAR VALLEY LAND & CATTLE CO., Limited. | 1072. | Cross-Bill. |

241 Now comes the Cedar Valley Land and Cattle Company, Limited, a party to all the above-mentioned suits, and petitions the court to enter an order of decree in each of said cases showing that the matters in controversy therein have all been settled and compromised by the parties and are decreed and adjudged to be finally settled, and ordering that all the said cases be dismissed, the plaintiff in each to pay costs therein, and that the sureties on the injunction bond given by this petitioner be discharged.

And in support of this application the petitioner files herewith true copies of the written correspondence between the parties embodying their agreement of compromise, and on the hearing of this petition will produce the originals thereof; also affidavit of George Dixon Fisher.

THE CEDAR VALLEY LAND & CATTLE CO.,
By GEO. W. McCRARY &
ADAMS & FIELD, *Solicitors.*

Said correspondence is as follows:

Received November 12, 1885.

Karnes and Waters will recommend any one of the following compromises:

1. C. & E. to be paid back the money for their stock, say $50,000.

C. & E. to pay back the sum of $40,000.

Ewing to resign the management.

The company to enter its appearance in a suit to be brought by C. & E. to determine value of their services and commis-
242 sion in purchase of property, leaving out all transactions between C. & E. and W. B. M.

2. The company to allow C. & E. 25,000 as their commissions for the purchase of the ranch, C. & E. to pay balance of $40,000, company to pay back amount of stock, each party to pay costs made by themselves.

3. Arbitrate by three persons, one selected by each, they to choose a third, what their services shall be, and the company then to pay the amount set, C. & E. to pay $40,000 & company to pay amount of stock.

Either proposition to be finality as to all the matters embraced in the bill filed by the company *vs.* C. & E.

*Response to the Proposition of Waters & Karnes, Attorneys for Coburn & Ewing.*

Adams & Field and Geo. W. McCrary will recommend to their client, the Cedar Valley Land & Cattle Company, a settlement with Coburn & Ewing as follows:

1. C. & E. to be allowed for their stock what they have paid on it.

2. C. & E. to pay back to the company the sum of $40,000.

3. Ewing to surrender the management.

4. This settlement to be a full and final adjustment of all the controversies between the parties and of all claims of either party against the other.

5. No delay of legal proceedings in consequence of these negotiations, unless by an agreement the controversies are ended.

This proposition involves the surrender of the company's claim for the profit on the sale of the Delaware-street property, to which we think it entitled, and which will, we suppose, amount to about the sum of $15,000, as well as other claims set forth
243 in its bill.

And it involves also the allowance for the stock of C. & E. of about $10,000 more than its present value.

These are therefore the most favorable terms we can recommend and under no circumstances can we advise the payment of commissions to C. & E. or any waiver of the company's right to defend against any claim that they may make on this account.

KANSAS CITY, MO., *Dec.* 28, 1885.

Judge Geo. W. McCrary, att'y-at-law.

MY DEAR SIR: In the matter of the controversy between the Cedar Valley Land & Cattle Company and Mess. Coburn & Ewing it must have been observed that I have not seemed quite in accord with those associated with me. I have always felt inclined to some amicable adjustment, and regretted when I was directed to terminate rather summarily the negotiations to that end undertaken a few weeks ago. I have now taken the liberty of addressing you this note entirely upon my own responsibility, and I am induced to do so by a statement made to me by Mr. Gage, a mutual friend of both parties, to the effect that he understood Mr. Fisher that the terms

proposed by you in our former negotiation were still open for acceptance. If such be the case I say frankly to you that in my judgment the terms then proposed contain substantially the correct basis of settlement, and I would like again to move in the direction of ending all this interminable litigation. I do not wish to trespass on your valuable time, and hence I have not called to present these views in person, but if this letter receives a favorable response
244 I will see my clients and at some time when agreeable to you will call at your office to canvass the matter more in detail. If it is thought best by you not to negotiate further I would be glad that no mention be made of this letter.

With high regard, very truly, J. V. C. KARNES.

KANSAS CITY, MO., *December* 28, 1885.

J. V. C. Karnes, Esq., Kansas City.

MY DEAR SIR: Yours of this date received. Mr. Fisher is out of town and will not return until the last of the week. I think, however, he is still disposed to settle, and if you can bring your clients to agree to the terms proposed by us let me know, and as soon as he returns I will see him and advise you.

Yours truly, GEO. W. McCRARY.

P. S.—I will not mention the matter to any one until I hear from you further.

G. W. M.

KANSAS CITY, MO., *Dec.* 28, 1885.

Judge Geo. McCrary, city.

MY DEAR SIR: Upon the receipt of your communication of to-day I at once sought an interview with my clients. Maj. Ewing is out of the city, and I only saw Mr. Coburn, who thinks Maj. Ewing will agree to any arrangement that he may make. He
245 has much to say of the company's injustice to them in seeking to appropriate without compensation the result of their labor and skill in the purchase of this property. He contends that Munson was taken at a time when for several reasons he was very anxious to sell, and that they drove an unusually good bargain with him. Of course, I have sought to impress upon him that the case must be tried squarely upon the law. I have brought myself to believe that there is not much probability of your recovering on account of the house and the bulls, but as to the commission of $40,000 I have said frankly that I believe the chances were against my clients. This amount represents the whole sum your company has lost, while it has received the benefit of valuable services at no expense whatever. Any settlement made must involve an entire withdrawal of the interests of Coburn & Ewing. They insist that their stock is worth a premium, while, on the other hand, Mr. Fisher claims that it has depreciated. I am aware that you have the impression that Burnett was not connected with this sale, but in this it is more than probable that you are in error, and Coburn & Ewing have in their possession the proportional part realized coming to Bur-

nett, amounting to $16,800. All these phases of the case I have gone over carefully with Mr. Coburn, and he has become willing to settle in a way approximately as follows:

(1.) That the stock of Coburn & Ewing be taken at $50,000.

(2.) That Coburn & Ewing pay back to the company the $40,000 received from Munson.

(3.) That the company, with American securities, indemnify C. & E. against any claim of the representatives of Burnett as to the $16,800.

(4.) That all suits be dismissed, each party paying his own
246 costs, all claims for damages or compensation be waived, and full receipts passed.

(5.) That the salary of Ewing up to the time of his discharge be paid to him, amounting to about one month's pay, and that there be paid a few small items of expenses, amounting in all to a very small sum. As I understand, this is substantially your proposition to us. In a conversation with you I think you stated that you would favor the indemnity for the $16,800. I believe there is a controversy between Mr. Ewing and Mr. Fisher as to whether the company owes Ewing about a month's balance on salary. This, however, of course, can be settled by the books. If I have not made my proposition clear I will be glad to state it more fully, and upon Mr. Fisher's return I much hope a satisfactory adjustment can be made.

Yours truly, J. V. C. KARNES.

KANSAS CITY, MO., *January* 5, 1886.

Col. J. V. C. Karnes, Kansas City.

MY DEAR SIR: We were advised by the counsel of the Cedar Valley Land & Cattle Company in London that the company has no right either to purchase or provide for the cancellation of the stock now held by Coburn & Ewing. In view of this advice Mr. Fisher does not feel at liberty to conclude the settlement upon the basis of taking back the stock. If we could agree upon any settlement which would leave the stock in the hands of Coburn & Ewing or which would not require the company to take it Mr. Fisher would feel at liberty to act in the matter; but, as I assume
247 that this cannot be accomplished, I have advised Mr. Fisher, who leaves for London in a few days, to lay the whole matter before the board and give us instructions which will, I hope, enable us to agree with you upon some disposition of the stock and upon a final satisfactory adjustment of the matters between the parties.

Yours truly, GEO. W. McCRARY.

KANSAS CITY, MO., *January* 8, 1886.

Judge Geo. W. McCrary, att'y-at-law.

DEAR SIR: Your note of the 5th inst. was duly received, stating that no further action could be taken in the matter of settling the dispute between the C. V. L. & C. Co. and Mess. Coburn & Ewing until Mr. Fisher had additional instructions from his company. I have delayed answering until I could confer with Mess. C. & E.,

which I have now done. They greatly regret the delay that will be necessar-y occasioned, as they hoped for a speedy termination of the controversy. I have urged upon them that they allow me to continue my efforts for an adjustment. This they have done, with the understanding that I request you to ask Mr. Fisher to report by cable at the earliest possible moment whether the proposition will be accepted. This is a matter involving so large an amount and requiring the taking of testimony at so many and such remote points that I assume that we are agreed as to the importance of determining this negotiation one way or another as soon as the same can be reasonably done.

248 Awaiting your further advice, I am, very truly,

J. V. C. KARNES.

KANSAS CITY, MO., *January 11th*, 1886.

J. V. C. Karnes, Esq.

DEAR SIR: I have arranged with Mr. Fisher to cable me instructions from London as to compromise of the controversy between Coburn & Ewing and the C. V. L. & C. Company. I will advise you promptly when instructions are received.

Very truly yours, GEO. W. McCRARY.

KANSAS CITY, MO., *Jan'y* 26, 1886.

Judge Geo. McCrary, city.

DEAR SIR: Mess. Coburn & Ewing have 2,000 shares in the C. V. L. & C. Co., £5 each, paid, amounting to about $48,800. They will settle the controversy with the company—

1. By returning the $40,000 commission and the company's taking their stock at the actual price paid by them; or,

2. They will turn over to the company 1,600 shares and retain 400.

3. In any event C. & E. are to be protected against any claim by Burnett's estate, either by a release or indemnity.

4. Mess. C. & E. agree not to buy up or otherwise molest any of the ranch privileges now enjoyed by the company.

5. This settlement in no way to affect the arrangements heretofore made concerning the W. & L. cattle, but the same to be carried out by both parties in good faith as agreed upon, but not to enter into this arrangement in any way whatever. In other words, the

249 W. & L. cattle are in no way taken into consideration in this settlement.

6. The balance of salary as compensation to be paid to Mr. Ewing.

Very truly, KARNES & ESS.

KANSAS CITY, MO., *February* 2, '86.

Col. J. V. C. Karnes, Kansas City.

MY DEAR SIR: I enclose herewith a letter just received from Mr. Fisher from New York, which explains itself.

Mr. F. carries with him to London the several propositions of set-

tlement which have been under discussion. Will you kindly advise me what response Coburn & Ewing have to make to the terms suggested in this letter? If possible I should like to be advised in time to write Mr. Fisher to-morrow, as requested.

Please return Mr. Fisher's letter.

Yours very truly, GEO. W. McCRARY.

(Inclosure.)

NEW YORK, 29*th Jan'y*, 1886.

Geo. W. McCrary.

MY DEAR SIR: As I wired you yesterday, I am unfortunately here till to-morrow, at 2 p. m., in consequence of the steamer I intended sailing with yesterday being disabled. I am sorry at this, as I am anxious to get to London to consult with my codirectors. I have been thinking a good deal over the best way to arrange a compromise with C. & E., but in every shape I take it it is always saddled with the difficulty of dealing with their stock.

250 No one, of course, would be fool enough to take their shares at par when it is so generally known, and by none better than C. & E. themselves, that the value of all cattle shares are not within 20 per cent. of what they were, and as the company itself can neither buy or cancel it is most perplexing. The following is a proposition that has occurred to me that C. & E. might submit to the board: C. & E. agree to pay Co. the $5,000 commission, with interest thereon at the rate of 8 per cent. per annum for the time they have had it; C. & E. to retain their stock in company, the directors getting for them an advance on it for $40,000, at the rate of interest of 10 per cent. per annum, said advance to go to liquidate the debt to the company, C. & E., besides, paying the company's expense in connection with this litigation.

This arrangement would enable C. & E. to hold their stock, which they appear to value so highly, until such time as they could sell it at par, or possibly, in two years, at a premium, and at the same time refund the $40,000. The company would in this case not commence proceedings for damages caused by turning back the cattle. If you think well of this project you can see Karnes about it, and, if C. & E. are disposed to make the above proposition, cable the word "consent" on 8th February, the day I expect to get to London. Frankly, I must say this is a more favorable settlement than I would give them, as I am satisfied there is more in the real estate than $15,000, but under the circumstances might be accepted by the board.

Faithfully, GEO. D. FISHER.

Of course, if there is no cablegram, I will understand they will not make this proposition; in any case, write not later than Wednesday.

251 KANSAS CITY, MO., *Feb'y* 2, 1886.

*Mess.* Geo. W. McCrary, city.

DEAR SIR: I am just in receipt of your letter of to-day, including a letter from Mr. Fisher, from N. Y., which I herewith return to

you. You have heretofore seen fit to express your appreciation of what I had done and was doing to get this controversy settled, and hence I need not restate my endeavors in the matter. I am only sorry to see Mr. Fisher taking the position indicated by his letter. I am now convinced that Mr. Gage was correct in his opinion that he, F., was unfavorable to any settlement. The terms proposed in his letter I have not submitted nor will I submit to my clients. I have been satisfied from the beginning and am still satisfied, and have so stated to Mess. C. & E., that they were liable in law for the return of the $40,000, but I do not believe they are liable any further. This they ought to repay. On the other hand, this company has received the benefits of their labor without any expense. There ought to be some recognition of the equities of the case. On such a basis I have tried to have an adjustment made; but if it is the determination of Mr. Fisher to drive these men to the wall, then there is no alternative left but to fight. I shall still hope, however, that through the co-operation of yourself and Mr. Gage that a fair and just settlement may be made, and that the damage to the interests of all concerned, to which Mr. Fisher's rashness will lead, may be avoided. As Mr. Fisher mentioned my name in his letter, I would be glad to have him furnished a copy of this.

252 Very truly, J. V. C. KARNES.

*Cablegram.*

From London. Kansas City.

Ewing's proposals declined. Letter posted to-day, enclosing complete answer to cross-bill and conveying the only terms which will be accepted. Inform Ewing.

KANSAS CITY, MO., *February* 24, 1886.

Col. J. V. C. Karnes.

MY DEAR SIR: I enclose a copy of letter, just received from the secretary of the Cedar Valley Land and Cattle Company, submitting the only terms upon which the company will settle with Coburn & Ewing. The sum demanded is nominally larger than that offered by you, but, as it is proposed to receive payment in cattle and the stock of the company now held by C. & E. at par, I am in hopes your clients will consider it better to accept than to continue the litigation.

If this proposition is accepted please advise me before March 4th.

Yours truly, GEO. W. McCRARY.

KANSAS CITY, MO., *Feb.* 27, 1886.

Judge Geo. W. McCrary, city.

253 DEAR SIR: On February 4th, 1886, you handed to J. V. C. Karnes, Esq., one of our counsel, a copy of a letter which you had just received from the secretary of the Cedar Valley Land & Cattle Company, which is as follows:

"THE CEDAR VALLEY LAND & CATTLE COMPANY, LIMITED,
MORGATE STREET CHAMBERS, LONDON, E. C., *Feb.* 11, 1886.

DEAR SIR: The board have had under their very careful consideration Mess. Karnes & Ess' letter, dated the 26th of January, 1886, containing two alternative offers by Mess. Coburn & Ewing for the settlement of the claims made by the Cedar Valley Land & Cattle Company upon them.

I am instructed to inform you that neither of these propositions is acceptable, and that the action against Mess. Coburn & Ewing must proceed. With that view the answer to Mess. Coburn & Ewing's cross-bill has been forwarded to Mess. Adams and Field along with a letter from the solicitors of the company.

The company being liable in a large sum of costs, which will not be recovered from Mess. Coburn & Ewing, the only terms upon which the board can agree to compromise the claim to the company are as follows:

1. That the amount payable to the company by Mess. Coburn & Ewing be £10,000, the amount paid by them for the 2,000 shares now standing in their names.

2. That this amount, £4,000, shall be paid in cash, or in lieu thereof that the cattle of the L. & W. herd now upon the Cedar Valley ranch shall be accepted as cash, when counted over this spring, upon a valuation to be made by two valuers—one chosen by Coburn & Ewing and one by the company—the valuers appointing
254 a referee.

3. That the balance then remaining due to the company will be discharged by the transfer to such person or persons as may be named by the board of a sufficient number of Mess. Coburn & Ewing's shares on the basis of a par value, the shares then remaining in the hands of Coburn & Ewing to be held by them for a period of not less than two years.

4. Mess. Coburn & Ewing to give security that they will not buy up or otherwise molest any of the range privileges now enjoyed by the company.

5. The company agree to protect Coburn & Ewing against any claim from the executors or the partner of the late Geo. Burnett.

When the board consider (1) that the issue has practically been decided against Mess. Coburn & Ewing by the same judge before whom the case will ultimately be tried; (2) that Mess. Coburn & Ewing have received from Mr. Munson the sum of $75,000 for a property which, in the written estimate of six of the eminent valuers in Kansas City, is worth from $45,000 to $50,000; (3) the almost insuperable difficulty which the board will have in placing any of the shares transferred by Mess. Coburn & Ewing in consequence of the non-payment, a dividend resulting from Mr. Ewing's vindicative or ill-judged action in ordering the beeves back to the ranch, and (4) the interest upon the amount of commission obtained in various ways from Mr. Munson from the period of its receipt up to the present date, which, we are advised, would be recoverable from them by an action at law, the board is of the opinion that the foregoing offer is more favorable to Mess. Coburn &

Ewing than the latter have any right to expect. The board, however, is induced to offer these easier terms with the object of settling the matter before the general meeting of the 4th of March.

255 It is therefore to be distinctly understood that this proposal only remains open until the 3rd of March, and that, failing the receipt on or before that date of a telegram announcing that Mess. Coburn & Ewing have signed an agreement embodying the above terms, the offer now made by the board is withdrawn on that day. It will suit the company infinitely better to receive the amount of their claim in cash, as would be the case when a judgment has been recovered in their favor, than to have to deal with any large number of shares transferred by Mess. Coburn & Ewing. It is to be understood that the offer is to be made without prejudice to any claim for damages which the board may have against the executors or the partner of the late George Burnett.

The directors desire me to add that in the event of the foregoing offer being refused they will feel it their duty in the interests of the shareholders to claim full compensation for damages which the company have sustained under various heads, which are clearly attributable to the account of Mess. Coburn & Ewing.

I am, dear sir, yours truly,

JAMES E. WEBB, *Sec'y.*

Geo. W. McCrary, Kansas City, Mo., U. S. A.

And on February 26th, 1886, you sent to Mr. Karnes the original letter you had on that day received from the same party, and which was as follows:

256 THE CEDAR VALLEY LAND & CATTLE COMPANY, LIMITED, MORGATE STREET CHAMBERS, LONDON, E. C., 12*th Feb.*, 1886.

DEAR SIR: In reading over the letter which I had the pleasure to address to you yesterday I noticed two points in reference to which I would like to make some observations.

The sum of £10,000 is fixed as the damages to be paid by Mess. Coburn & Ewing, and it is added that this sum was the amount paid by Mess. Coburn & Ewing for their shares. Seeing that there is no connection whatever between the claim for damages and the payment for shares, it is advisable that the words "the amount paid by them for the 2,000 shares now standing in their names" be eliminated from the letter, if you think advisable to read it or give a copy of it to Mess. Coburn & Ewing.

The words "vindicative or ill-judged," on page 3 of the letter, should also be eliminated, as Mr. Ewing, in his letter 24th October last, stating that he was acting for the best interests of the stockholders in turning back the beeves. These words are unnecessary, although the directors could not possibly approve a step which precluded the possibility of paying a dividend, the nonpayment of which would have, as had been fully explained to Mr. Ewing, such an injurious effect on an English company. If Mess. Coburn and Ewing should prefer to deliver the cattle of the L. & W.

herd, now on the Cedar Valley ranch, the transfer of 1,200 would be accepted by the board at present, leaving the balance of £4,000 to stand over in the meantime. If the valuation of the L. W. herd shall eventually fall short of that sum, the balance of such valuation to be made up to the company by the transfer of an
257 equivalent number of shares in the company on the basis of a par value, the boarding of the above cattle to be paid for at the time of transfer at the agreed-on rate, $1.50 cents per head.

The board is quite ready to agree to Mr. Ewing's stipulation that he shall be paid his salary during such time as he remained in the service of the company, whatever amount may be found due to him upon a proper adjustment of accounts.

Will you kindly bear these points in mind in dealing with the other side?

I am, dear sir, yours truly,

JAMES E. WEBB, *Sec'y.*

Geo. W. McCrary, Esq., Kansas City, Mo., U. S. A.

Both of these communications, together with your two letters forwarding them to Mr. Karnes, he has placed in our hands. In connection with both of our counsel we have fully considered the terms of this proposition. We wish to state emphatically that we regard the proposition as unjust and oppressive, but we have so much involved in this litigation that we agree to and accept the terms of the offer as made. The £4,000 will be arranged for with the L. W. cattle, as suggested in the letter of February 12th, and the 1,200 shares of stock therein mentioned we herewith hand you, to be transferred to such parties as may be named. We have only two certificates of two thousand shares each, and we deliver both to you, and the company can return us a certificate for 800 shares.

The bond called for by the fourth section of the proposition
258 in the letter of February 11th we will give at any time. It will now soon be the season when the L. W. cattle can be counted, and we will be ready at once to name valuers. Now that a settlement has been effected, we hope there will be no delay in carrying it out in all respects as agreed upon.

We desire to express to you our thanks for the uniform courtesy with which you have treated us throughout this unpleasant matter.

We are, dear sir, very truly,

W. N EWING.
JAMES M. COBURN.
COBURN & EWING.

KANSAS CITY, *February* 27, 1886.

Mess. Coburn & Ewing, Kansas City.

GENTLEMEN: Mr. Karnes has handed me your letter accepting the terms of compromise proposed by the Cedar Valley Land & Cattle Company, and has also placed in my hands the certificates for the two thousand shares of stock held by you in the company. I will wire Mr. Webb, secretary of the company, that you

have accepted in writing the company's proposition, and have written him requesting that the company take immediate steps to choose a valuer and proceed with as little delay as possible to close up the matter of the compromise. Of course, it is understood that the settlement embraces all the matters involved in the pending litigation in the several suits between the parties.

The matter of costs and the balance due you on salary can easily be adjusted hereafter. Col. Karnes and I agree that each party pays its own costs.

Yours truly, GEO. W. McCRARY.

259 KANSAS CITY, MO., *March* 18, 1886.

Messrs. Karnes & Ess, Kansas City, Mo.

GENTLEMEN: I am just in receipt of a letter from James E. Webb, secretary of the Cedar Valley Land & Cattle Company, Limited, of date March 6th, of which I inclose you a copy. Mr. Webb sends me with this letter an assignment, to be executed by Messrs. Coburn & Ewing, transferring to him 1,200 shares of their stock in said company. When Mr. Webb wrote this letter he had not received my communication, written on the 27th day of February, informing him that Messrs. Coburn & Ewing had placed in my hands their certificates for the whole 2,000 shares, and had requested that the company would issue to them a new certificate for 800 shares. That letter would reach London about the 7th instant, and an answer may be expected very soon. Probably it would be better to take no further action until it is received.

Yours very truly, GEO. W. McCRARY.

The Cedar Valley Land and Cattle Company, Limited, Morgate St. Chambers (30*a* Morgate street).

LONDON, E. C., 6 *March*, 1886.

DEAR SIR: I have to acknowledge the receipt, on the 27th February, of your cablegram of that date, reading:

"Terms proposed accepted by Coburn & Ewing to-day in writing."

That telegram was laid before the board at their meeting
260 on the 3rd inst., and I am directed to inform you that they are glad that a settlement has been arrived at upon terms which they believe will be found upon consideration to be satisfactory to all parties. The board is prepared to find that all the obligations entered into by Mess. Coburn & Ewing will be faithfully and honorably carried out by these gentlemen, and they trust that amicable relations will be resumed and will continue uninterruptedly for the future.

With the view to carrying out of the provisions of the agreement with Mess. Coburn & Ewing, I now enclose a transfer of 1,200 shares, to be executed in my favor, and the company undertake that if the value of the L. W. herd shall exceed the sum of £4,000 the difference shall be adjusted by the retransfer to Mess. Coburn and Ewing of shares to an equivalent value.

Awaiting confirmation by letter of your cablegram of the 27th,
Yours truly, THOMAS E. WEBB, *Sec'y.*

Geo. W. McCrary, Esq., K. C., Mo., U. S. A.

KANSAS CITY, Mo., *March* 27, 1886.

J. V. C. Karnes, Esq., Kansas City.

DEAR SIR: I am now advised that the Cedar Valley Land & Cattle Company cannot issue the new certificates for eight hundred shares of stock to Coburn & Ewing, as per terms of compromise, until the latter have assigned the twelve hundred shares. They therefore wish Mess. C. & E. to execute the inclosed assignment, to be sent by me to London. This done, they will immediately execute and send over the new certificates for eight
261 hundred shares.

Please have the assignment executed and return to me at the earliest time practicable, as I wish to forward it without delay.

Yours truly, GEO. W. McCRARY.

(Inclosure.)

The affidavit of George Dixon Fisher is in words and figures as follows, to wit:

UNITED STATES OF AMERICA,
*Western District of Missouri, Western Division,* } *ss:*

GEORGE DIXON FISHER, being duly sworn, on oath deposes and says that he is agent and attorney-in-fact of the Cedar Valley Land and Cattle Company, Limited, and as such has for some time been engaged in negotiations for the settlement and compromise of the pending litigation between that company and Messrs. Coburn & Ewing in the circuit court of the United States, in the above-mentioned district, and that on or about the 29th day of April, 1886, this affiant called upon J. M. Coburn, a member of the firm of Coburn & Ewing, and submitted to him the form of a bond to be given by said Coburn & Ewing in pursuance of the terms of compromise, to bind said firm not to buy up or otherwise molest any of the range privileges of said company. The form of bond had been drawn by George W. McCrary and printed with a typewriter, but as drawn was not satisfactory, and a change therein had been made in pencil by said McCrary by striking out the words
"as part and parcel of the," in the second line, and inserting in
262 place thereof "in accordance with the terms of our letter of date Febuary 27th, 1886, accepting terms of compromise." In this form the paper was handed to Mr. Coburn, who added the following words, which now appear upon the paper in his own handwriting: "Of all pending litigation." The first sentence of said bond was therefore amended by Mr. Coburn so as to read as follows: "That for a good and valuable consideration and in accordance with the terms of our letter of date February 27th, 1886, accepting terms of

compromise of all pending litigation between us and the Cedar Valley Land and Cattle Company, Limited," &c. The original paper submitted to Mr. Coburn, with the amendment thereto in his own handwriting, is herewith filed, marked "Exhibit A," and made part of this affidavit.

Affiant further states that he is a member of the board of directors of the Cedar Valley Land and Cattle Company, and was present in said board when the proposition of compromise which has since been accepted by Coburn & Ewing was discussed and agreed upon and the secretary ordered to put the same in form; and affiant further declares that it was understood and intended by said board and by all the members thereof that the same should be a full and final settlement of all pending litigation between the parties.

Further affiant saith not.

GEORGE DIXON FISHER.

Subscribed and sworn to before me by George Dixon Fisher this 19th day of June, 1886. My commission expires April 24th, 1890.

[SEAL.] FRED. P. BARNETT,
*Notary Public, Jackson Co., Mo.*

263 "EXHIBIT A."

Know all men by these presents that for a good and valuable consideration and *as part and parcel of the** [in accordance with the terms of our letter of date Feb'y 27th, 1886, accepting terms of compromise (of all pending litigation)] compromise between us and the Cedar Valley Land and Cattle Company, Limited, we, the undersigned, James M. Coburn and William N. Ewing, partners composing the firm of Coburn & Ewing, do hereby agree and bind ourselves not to buy up or otherwise molest any of the range privileges now enjoyed by the said Cedar Valley Land and Cattle Company, Limited, in the counties of Randall and Deaf Smith, in the State of Texas.

In witness whereof we hereunto set our names this 26th day of April, 1886.

____ ____.
____ ____.
____ ____.

(CLERK'S MEMO.—The portion of the above-copied paper-writing included in brackets is interlined in pencil in the original on file in my office, and that portion of the copy through which a line is passed is similarly lined in the original.)

264 The following is the affidavit of J. V. C. Karnes — was filed on the 22nd day of June, A. D. 1886:

*A line is drawn through the words printed in *italics*.

In the Circuit Court of the United States in and for the Western Division of the Western District of Missouri.

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|---|---|
| COBURN *et al.*<br>*vs.*<br>CEDAR VALLEY LAND & CATTLE COMPANY, Limited. | Bill and Cross-Bill. |
| CEDAR VALLEY LAND & CATTLE COMPANY, Limited,<br>*vs.*<br>COBURN *et al.* | Bill and Cross-Bill. |

J. V. C. KARNES, being duly sworn, upon his oath says that he was one of the solicitors for Coburn & Ewing in the above causes, and that the Cedar Valley Land & Cattle Company was represented by Hon. George W. McCrary and Mess. Adams & Field; and he says that after the correspondence of February 27th, 1886, R. H. Field brought to his office a statement, prepared by Judge McCrary, to the effect that the settlement as agreed on of that date was to be in full of all claims or demand between the respective parties in such litigation. Affiant says that he has not a copy of the paper produced by Mr. Field, but states the contents of it from recollection. He says that he then distinctly told Mr. Field that such paper would not be signed, but that his clients, Mess. Coburn & Ewing, had settled their matters with the Cedar Valley Land & Cattle Company on the propositions of February 11th and 12th, 1886, and the unconditional acceptance of these propositions that day given by said Coburn & Ewing, and that under no circumstances would this settlement be supplemented by any
265 further agreement. Affiant says that he was present with Mess. Coburn & Ewing and Jos. G. Waters, Esq., one of their solicitors, when these letters of February 11th and 12th were considered, and it was then understood and agreed that the propositions hitherto made had been rejected, and that the company offered these terms in these letters of February 11th and 12th as the ultimatum, and while it was desired in many respects to modify these harsh terms, it was agreed that to avoid any misunder*tak*ing that the two letters be copied into a letter of acceptance, and that the terms be unconditionally accepted, and this was done; and affiant says that it was then distinctly stated by both Coburn and Ewing that these terms would be accepted only just in the way they were proposed and to cover nothing more; and affiant says that he and his associate counsel, Jos. G. Waters, prepared the letter of acceptance with that understanding. Affiant further says that in every letter and paper that has since been prepared that, so far as his knowledge extends, it has uniformly been with the understanding that the settlement of February 27th spoke for itself in the unconditional acceptance of the letters of February 11th and 12th, and that nothing was to be added thereto or subtracted therefrom.

J. V. C. KARNES.

Subscribed and sworn to before me, in Kansas City, Jackson county, Missouri, on this 22nd day of June, 1886. My commission will expire on the 22nd day of August, 1888.

[SEAL.] HENRY M. STONESTREET,
*Notary Public, Jackson Co., Mo.*

266 On the 19th day of July, 1886, the following entry appears of record:

CEDAR VALLEY LAND & CATTLE CO.
*against*
JAMES M. COBURN *et al.*

This day a decree is ordered for complainant herein.
Said order for a decree is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

| | |
|---|---|
| COBURN *et al.* *vs.* THE CEDAR VALLEY LAND AND CATTLE COMPANY, Limited. | Bill and Cross-Bill. |
| CEDAR VALLEY LAND AND CATTLE COMPANY, Limited, *vs.* COBURN *et al.* | Bill and Cross-Bill. |

There have been two actions pending between these parties, in each of which both bill and cross-bill were filed. While thus pending, negotiations for settlement were entered into, which have resulted in a settlement, and the question now presented is the extent of that settlement.

After several propositions had been made by both parties, on the 27th of February the cattle company sent to Coburn and Ewing a letter, in which all propositions of theirs were declined and in which it was stated that "the only terms upon which the board can agree to compromise the claim of the company are as follows." This proposition was unconditionally accepted and its terms have been complied with by Coburn and Ewing. Now they insist that all that was settled was the claim of the company as presented in its
267 pleadings, while their claims remain open and undisposed of.

The company, on the other hand, insists that all the matters in controversy, including all the claims of both parties presented in these two actions, were included in the settlement and are disposed of by the same.

I think that the company is right, and for these reasons:

First. Wherever parties are in litigation, having antagonistic claims, and a settlement is proposed and accepted it will be presumed that all matters in controversy in that litigation are included within the settlement unless the contrary clearly appears.

Second. It is perfectly obvious that the cattle company intended by its proposition to cover all the claims in controversy. It is true in the letter it says "the claim of the company," and in a narrow and technical sense that undoubtedly means simply its cause of action and would not embrace any distinct cause of action in behalf of the adverse party; but it is not a strained or unnatural use of language to construe it as applicable to the amount which the company claimed as the balance due after the adjustment and settlement of the respective claims of both parties. That such was the intent of the company is obvious from a preceding paragraph of that letter, in which the company uses this language: "The board have had under their very careful consideration Mess. Karnes & Ess' letter, dated the 26th of January, 1886, containing two alternative offers by Mess. Coburn & Ewing for the settlement of the claims made by the Cedar Valley Land and Cattle Company upon them."

In this is seen it speaks of offers made for settlement of the claims of the company—claims made by the company upon Coburn and Ewing. Turning to the letter referred to, we find that it
268 was in terms a proposition for settlement of the entire controversy and including the claims of both parties. Thus, in its letter proposing this settlement, the company placed an unmistakable interpretation upon the expression "claim of the company."

Further, immediately upon the receipt of the letter accepting this proposition counsel for the company wrote a letter, which was received by Coburn and Ewing, in which he stated: "Of course, it is understood that the settlement embraces all the matters involved in the pending litigation in the several suits between the parties;" so not only is the intent of the company clear, but it is also clear that Coburn and Ewing had full notice of that intent. Now, a contract—and this settlement is nothing but a contract—implies the agreement of two minds as to certain matters. What the company intended is clear, and that Coburn and Ewing had knowledge of that intent is equally clear. Of course, if they proceeded with the settlement with notice of what the company meant by the terms used they accepted the contract upon that basis.

Further, on the 29th of April, after the acceptance of this proposition of settlement, a bond was presented to Mr. Coburn which contained this language: "In accordance with our letter of date February 27th, 1886, accepting terms of compromise between us." Not satisfied with this language, Mr. Coburn in his own handwriting interlined these words after the word compromise, "of all pending litigation," which clearly shows that he understood that the settlement covered all the claims in controversy.

Finally and chiefly, these actions were pending in a court of equity, and such a court will see that good faith and fair
269 dealing are observed by both parties. After this proposition had been made and accepted and before anything had been done except handing to counsel some certificates of stock Coburn and Ewing were clearly notified of what the company intended by this proposition. Much remained to be done. Cattle were to be

valued, counted, and delivered. It was an easy thing to hand back the certificates of stock. If they were unwilling to accept the settlement when informed what the company understood and intended by the proposition, it was their duty to say we have misunderstood the scope of your proposition. If you mean all that you now say, we did not accept it. We have never come to any agreement. Instead of that, after full notice, they go on and comply with all the terms of the proposition. It is too late for them now to say we did not suppose that the proposition meant all that the company now claims; we thought it meant only a settlement of half the case, and insist upon the right to prosecute the other half.

I think the parties are entitled to a decree reciting that upon the evidence presented the court finds that there has been a full settlement of all the matters in controversy, and ordering that the several bills and cross-bills be dismissed, each party paying his own costs.

On the 19th day of July, 1886, the following affidavit of Geo. W. McCrary, read at the hearing, was filed:

In the Circuit Court of the United States, Western District of Missouri, Western Division.

| | |
|---|---|
| J. M. COBURN *et al.* v. THE CEDAR VALLEY LAND & CATTLE CO. | Bill & Cross-Bill. |
| CEDAR VALLEY LAND & CATTLE CO., Limited, v. COBURN & EWING. | Bill & Cross-Bill. |

GEORGE W. McCRARY, being duly sworn, on his oath states that he is one of the counsel for the Cedar Valley Land & Cattle
270 Company, Limited, in the suits above named, and has had the principal charge on the behalf of the company of the negotiations for compromise and settlement between the parties.

And affiant says that the said company and its counsel have throughout the negotiation insisted that any settlement made should end the litigation, and that the final proposition made by the company February 11th and 12th, through its secretary, was not intended to be any departure from this condition, but, on the contrary, was submitted by this affiant as a proposition to "end the litigation," as appears by the letter transmitting the same, a copy of which is now before the court.

Affiant says that neither he nor, as he believes, the company ever for a moment intended to settle the claims of the company against Coburn & Ewing, leaving their claims against it to be further litigated, and if said Coburn & Ewing or their counsel had such an intention it was unknown to this affiant at the time the settlement was entered into.

As soon as affiant heard an intimation that it might be claimed that the settlement did not cover all the matters in litigation he wrote

Coburn & Ewing the letter of February 27th, 1886, distinctly stating that the settlement was understood to cover all pending litigation. This letter was written the same day the acceptance of the proposition of compromise was received and before any steps were taken on behalf of the company by affiant to carry the same out. If affiant had then been notified that Coburn & Ewing would insist that only one side of the controversy was settled, he would have tendered back the stock certificate and declined to go on with the compromise; but hearing nothing further from Coburn & Ewing, and receiving soon after the paper filed with Mr. Fisher's affidavit,
271 in which Mr. Coburn described the proposition accepted by Coburn & Ewing as a proposition to settle "all pending litigation," affiant felt free to go on and perfect the compromise, believing that if Coburn & Ewing intended to attempt to reserve any right of action against the company it must be on some cause of action not involved in the present litigation. And further affiant saith not.

GEO. W. McCRARY.

Subscribed and sworn to before me this 29th day of June, A. D. 1886.

Witness my hand and notarial seal.

My commission expires April 24th, 1890.

[SEAL.] FRED. P. BARNETT,
*Notary Public, Jackson Co., Mo.*

The following affidavit of R. H. Field, read at the hearing, was also filed on the 19th day of July, 1886:

In the Circuit Court of the United States at Kansas City, Mo.

In the Matter of the Litigation between COBURN and EWING and THE CEDAR VALLEY LAND AND CATTLE COMPANY, Limited.

R. H. FIELD, being duly sworn, upon his oath says that he is one of the attorneys of said cattle company, and as such, on the 27th day of February, 1886, he presented to the affiant Karnes, one of the attorneys of Coburn & Ewing, a paper prepared by affiant after consultation with his associate counsel, Judge McCrary and Mr. Adams; that such paper was destroyed or misplaced by this affiant without more thought after the declination of Mr. Karnes to sign the same; that the principal purpose of affiant in presenting such writing to Mr. Karnes for signature was to obtain the speedy and formal discharge of the sureties on the injunction bond, because such sureties had been urged to sign said bond by counsel for said cattle
272 company; that such purpose was explained to said Karnes, though such paper did contain stipulations as to dismissing the bills and cross-bills at the costs of each party respectively, besides what is stated in affidavit of Mr. Karnes, and in no more specific way than is there and here stated, all of which counsel for the cattle company understood as already included in the settlement to be made. When such paper was presented to Mr. Karnes he replied that Mr. Coburn had gone to St. Louis, and that he would

make no other agreement of settlement for Coburn & Ewing. He assured this affiant, however, that the sureties on said injunction bond were not to be harmed or disturbed. With this assurance affiant dropped the matter and did not further urge Mr. Karnes' signature to such writing.

R. H. FIELD.

Subscribed and sworn to before me on the 23rd day of June, 1886.
[SEAL.] J. R. BINGHAM,
*Notary Public.*

I certify that on this 23rd day of June, 1886, I left a true copy of the within affidavit with Henry M. Stonestreet, a member of the firm of Karnes and Ess, at their office in Kansas City, Mo.

ROLLINS BINGHAM.

Subscribed and sworn to before me this 23rd day of June, 1886.
[SEAL.] B. WELLS,
*Notary Public, Jackson County, Mo.*

Commission will expire April 19, 1890.

The following affidavit, read at the hearing, was also filed on the 19th day of July, 1886:

273 In the Circuit Court of the United States in and for the Western Division of the Western District of Missouri.

COBURN *et al.*
*vs.*
CEDAR VALLEY LAND AND CATTLE COMPANY, Limited. } Bill and Cross-Bill.

CEDAR VALLEY LAND AND CATTLE COMPANY, Limited,
*vs.*
COBURN *et al.* } Bill and Cross-Bill.

JAMES M. COBURN, being duly sworn, upon his oath says that he is the party named in the above-entitled causes, and that he was and is a member of the firm of Coburn & Ewing, and as such he is familiar with the several steps that led to the arrangement that was made between said parties; and he says that he was present on February 27th, 1886, when the propositions of February 11th and 12th, made by said company, were considered. He says that at that time his said firm was advised that the proposition that they had made through Mess Karnes & Ess on January 26th had been rejected. He says that the terms submitted by said company as their ultimatum were, in most all respects, entirely different from that which had been made by the firm to said company; and he says that such terms as were proposed by said company would not have been accepted had it not been supposed that it was left open to them to make claim, if any they had, against said company for the purchase of said ranch. He

says that in all the early correspondence looking to a settlement this matter was distinctly referred to, and every effort was made to have said company submit to some amicable adjustment as to whether they ought to pay for services rendered in the purchase of said property. In the later correspondence nothing had been said about this compensation, and to avoid any misunderstanding the terms as laid down in the letters of February 11th and 12th were unconditionally accepted. He says that the letter written by Judge McCrary on February 27th was received by his said firm and submitted to J. V. C. Karnes, Esq., one of their counsel, who informed him that on the Saturday previous he, the said Karnes, had distinctly informed R. H. Field, one of the counsel for the company, that receipts in full were not to be passed, and, acting upon that, he saw no necessity for making any reply to said letter of February 27th and made no reply, as it was well known by the counsel for the company that the firm of Coburn & Ewing did not propose to settle all matters in dispute between them and said company. The sum and substance of the proposition was that Coburn & Ewing were to pay to said company ten thousand pounds, which said company agreed to take, part in cattle and part in stock held by Coburn and Ewing, and the suits were to be dismissed as now pending and each party to pay his own costs. Affiant says that in every possible way since that time, in every step that has been taken in closing up said transaction, Coburn & Ewing have distinctly refused to sign any receipts in full or to acknowledge any settlement in full, but that of the many different receipts that have been passed language indicating a settlement in full was in each case stricken out, and in lieu thereof it was inserted that the receipt was given on the basis of the letters — February 11th and 12th and the acceptance thereof of February 27th. Affiant says that not a word has willingly been spoken by him or a line written indicating that these several receipts that were passed were to be in full settlement of all claims between the parties. Affiant says that he has no recollection concerning the interlineation made in the paper attached to the affidavit of Mr. Fisher. He says that in the last several weeks his mind has been greatly occupied with other matters, and he is not fully aware of all that he has done in connection with this business, but he knows that there was no intention to do or say anything which would convey the impression that Coburn & Ewing intended to abandon their claim for services honestly and faithfully rendered, and both he and his partner have repeatedly canvassed these matters as to how this claim could best be made, and that he never intentionally waived the same in any way whatever. Affiant says that every step taken in the purchase of said ranch was in the utmost good faith and with a strict regard to the interests of said company, and that, acting upon the claim made by said company, his said firm has paid to the company more than ever received from said Munson, and that for their services rendered in the purchase of said ranch they have received no compensation, and that said company has refused to pay to said firm anything for such services. Affiant says that it was his under-

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standing and agreement that the suits pending in this court were all to be dismissed, each party paying his own costs; and affiant says that he is ready and willing to do, waiving any claim for damages on the injunction bond, as agreed upon, but reserving the right to make claim against the company for services rendered to the company in the purchase of said ranch.

JAMES M. COBURN.

Subscribed and sworn to before me, in Kansas City, Missouri, this June 28th, 1886. My commission will expire August 22nd, 1886.

[SEAL.] HENRY M. STONESTREET,
*Notary Public, Jackson Co., Mo.*

276 Afterwards, to wit, at the May term of said court and on the 2nd day of August, 1886, the following entry appears of record in this cause, to wit:

CEDAR VALLEY LAND & CATTLE CO.
*against*
JAMES M. COBURN *et al.*

The following decree, filed July 24th last, was this day ordered to be recorded:

In the Circuit Court of the United States, Western District of Missouri, Western Division.

THE CEDAR VALLEY LAND & CATTLE COMPANY, Limited, *v.* J. M. COBURN and W. N. EWING. } 1070. On Cross-Bill.

This case came on to be heard upon the petition of the said complainant in the cross-bill for final decree settling and adjudicating all the issues herein, George W. McCrary and Adams & Field appearing for complainant and J. V. C. Karnes and Joseph Waters appearing for respondents in said cross-bill; and the court, having heard the evidence and the argument of counsel, sustains said petition, and it is therefore ordered, adjudged, and decreed that there has been, by the agreement of the parties, a full compromise and settlement of all the matters in controversy in this case; and it is ordered, in pursuance of the agreement of the parties, that the bill be dismissed at the cost of the complainant, to be taxed.

DAVID J. BREWER,
*Circuit Judge.*

And now come defendants, by their solicitors, and file application for a rehearing and a stipulation of parties setting the same for hearing.

277 Said application for a rehearing is in the words and figures following:

In the Circuit Court of the United States, Western Division of the Western District of Missouri.

THE CEDAR VALLEY LAND & CATTLE CO., Limited, Pl'ff,
*vs.*
JAMES M. COBURN *et al.*, Def'ts.

James M. Coburn and William N. Ewing ask the court to set aside and vacate the decree entered in the above-entitled cause and grant them a rehearing for the following reasons:

1. The evidence on which this decree was based consists entirely of correspondence between counsel and affidavits, and it nowhere appears that any form of entry was ever agreed upon or ever spoken of, other than that the bills and cross-bills should be dismissed, each party paying his own costs. The settlement made was wholly outside of the court and was not pleaded, and the court has no jurisdiction to supplement the agreement of the parties by decreeing a final settlement.

2. The court overlooked the testimony showing that the counsel for the Cedar Valley Land & Cattle Company, before writing the letter to Coburn & Ewing, in which he stated "of course it is understood that the settlement embraces all the matters involved in the pending litigation in the several suits between the parties," had written a paper embodying the same idea, and had submitted the same to the counsel for Coburn & Ewing, who had peremptorily refused to sign it, and the counsel for the company, knowing this refusal, did not offer to return the stock and terminate the arrangement, but held the stock, and in a letter to Coburn & Ewing assumed a state of facts to exist which he ought to have known
278 did not exist. In overlooking this previous correspondence the court committed error.

3. The court further erred in reaching the conclusion that the details of the settlement were carried out by Coburn & Ewing without disclosing their understanding that this was not intended as a full settlement. The evidence will show that at every step the counsel for the company had full knowledge that this claim would be made, and every word was excluded from the receipts and other papers passed between the parties which could in any way be construed into a final settlement of all matters in dispute. These receipts and other papers were not in evidence, but as it has been assumed that the company completed the arrangement on the belief that it was in full, we would ask to furnish copies of such papers and full affidavits covering these points.

4. The court erred in concluding there was a lack of "good faith and fair dealing" on the part of Coburn & Ewing in making said settlement. A proposition was made by the company and accepted by Coburn & Ewing. In less than an hour afterward a paper was prepared by counsel for the company engrafting upon the settlement as made additional terms, reciting that this was in full of all matters in dispute. This was promptly declined by counsel for Coburn & Ewing. The stock could then have been returned, but it was retained, and an effort made again to have

Coburn & Ewing committed to a full settlement by the letter which was written. In the progress of the settlement the forms for receipts were carefully prepared, so as to exclude the idea that it was a settlement. The forms for receipts were carefully prepared so as to exclude the idea that it was a full settlement. The full evidence will disclose the fact that this company has carefully sought from the beginning to recover the last cent possible from Coburn & Ewing, and at the same time
279 has been unwilling to have the claim made by Coburn & Ewing judicially determined. To refute this imputation of unfair dealing your petitioners would ask that they may be permitted to offer in evidence the papers as originally prepared for carrying out the details of the settlement and the changes in them insisted upon by Coburn & Ewing and allowed by said company, showing that at all times from the acceptance of the proposition the company had full knowledge of the understanding of Coburn & Ewing and what they would insist upon, and that "good faith and fair dealing" would have required the company to have their repudiated the arrangement, instead of taking to itself all the benefits arising therefrom.

5. Full and complete evidence will show that the interlineation made by J. M. Coburn in the bond has been wholly misunderstood. This bond was never used, and this change was made at a time when it was sought to agree upon these forms for carrying out the details, and in using this expression, "pending litigation," reference was had solely to claim made by the company, and when subsequently understood that it might be construed to cover both bills and cross-bills this expression was not used and nowhere appears in the papers so used in settlement; all of which can be shown by a full statement of all the evidence bearing upon this point.

6. The evidence discloses that this company has had the services of Coburn & Ewing without any compensation whatever. This is no new claim made by Coburn & Ewing, but has been insisted upon at every step. The court has only been put in possession of a portion of the facts. The opinion filed shows the mistakes into which the court has been led. We ask that the case be reheard, and (1) that this application for a decree be denied, and that the parties be left to the agreement which they have made, and that the
280 bills be dismissed.

(2.) Or that the entire evidence bearing on this settlement be heard.

J. G. WATERS,
KARNES & KRAUTHOFF,
*For Coburn & Ewing.*

The following stipulation was also filed on the 2nd day of August, 1886:

In cases numbers 1043, 1069, 1070, & 1072, by agreement, the motions for rehearing to be taken up and disposed of next rule day.

KARNES & WATERS,
*For C. & E.*
R. H. FIELD, *For Cattle Co.*

The following notice was filed on the 11th day of September, 1886:

To Judge George W. McCrary:

You are hereby notified that on the 17th day of September, 1886, in the city of Leavenworth, Kansas, before Judge Brewer, we will call up the petition to set aside the decrees in the several cases pending between Coburn & Ewing and the Cedar Valley Land & Cattle Company, Limited, in the circuit court of the United States for the western division of the western district of Missouri.

J. G. WATERS &
KARNES & KRAUTHOFF,
*Attorneys for Coburn & Ewing.*

Kansas City, Mo., Sept. 11, '86.

I hereby accept service of above notice.

GEO. W. McCRARY,
281 *For Cedar Valley Land & Cattle Co., Limited.*

Afterwards, to wit, at the October term of said court and on the 8th day of November, 1886, the following opinion was filed:

In the Circuit Court of the United States, Western Division of the Western District of Missouri.

THE CEDAR VALLEY LAND AND CATTLE COMPANY, Limited,
*vs.*
JAMES M. COBURN *et al.*

*Opinion.*

BREWER, *C. J.:*

Coburn and Ewing petition for a rehearing.

They object that the decree as entered shows a final settlement of all matters in controversy and dismisses the bills and cross-bills, when in fact there was no final settlement and when under the pleadings no such question was in issue or could be determined.

The facts are these: After bills and cross-bills had been filed some compromise was effected; of that there is no dispute.

The Cedar Valley Company filed a petition alleging that all claims in dispute had been settled and asking a decree accordingly.

A hearing was had; affidavits and other testimony presented without objection. Both parties appeared and argued the question. No objection was made to the form of the proceeding, the only objection being that in fact the settlement was only partial instead of total, and that the court had no right to enquire into the matter, but could only dismiss the bills and cross-bills. Now, it is insisted
282 that if anything had transpired since the filing of the original bills and cross-bills changing or affecting the issues such new matter should have been presented by supplemental bill. I think counsel are right, and that such is the true practice; but that is a mere matter of form. All the facts were presented as fully and as clearly as

though stated in a supplemental bill. No objection on account of form was suggested. Will a party be permitted to test the judgment of the court on the substance of the controversy and upon defeat, then for the first time raise a mere question of form? Nothing can be plainer. When cases of an equitable nature are removed from a State court seldom is the plaintiff's pleading in the full and precise form of a bill in equity. If parties insist, repleading is ordered. But, if not, and all the facts are stated, will the court, after decree, set it aside simply because the pleading does not contain all the formalities of a bill? Such a proceeding would give a bitter irony to the application of the court as a court of equity. So here it is not pretended that all the facts were not stated, but only that they were not presented through the formalities of a supplemental bill. Coburn and Ewing were cut off from no right; were not prevented from making a full defense. They had every opportunity they asked.

Again, it is insisted that affidavits were used, and not depositions; that no cross-examination was had, &c. But all this was by consent, or at least without objection. They offered affidavits themselves; had all the time they sought for presenting their testimony. They never asked to take depositions or the privilege of cross-examination or time to produce more testimony, of which they now say they have an abundance. They made no objection as to the manner in which the testimony was presented, and I doubt not that if all the testimony had been by oral examination of witnesses in open court such irregularity, if acquiesced
283 in at the time, would have furnished no ground for setting aside the decree based thereon.

He who keeps silent when he should speak must keep silent forever thereafter.

Of the merits of the case I shall add nothing to what I said before when ordering the decree, and of the duty of the court to render such a decree upon the application of either party, when there has been in fact a full compromise and settlement, I have no doubt. The application for a correction of the decree and for rehearing is denied.

DAVID J. BREWER,
*Circuit Judge.*

Afterwards, on the 27th day of November, A. D. 1886, the following entry appears of record, to wit:

CEDAR VALLEY LAND & CATTLE CO.
*against*
JAMES M. COBURN *et al.*

Now, on this day, the application of the defendants for a rehearing herein coming on for hearing, and having been argued by counsel and submitted to the court, and the premises having been duly considered, it is ordered by the court that the same be denied, and that the costs of said application be taxed against the said defendants.

And now again come the defendants, by their solicitors, and file petition for an appeal to the Supreme Court of the United States; and the following order is filed and ordered to be engrossed, to wit:

THE CEDAR VALLEY LAND AND CATTLE COMPANY, Limited, Complainant, *vs.* JAMES M. COBURN and WILLIAM N. EWING, Respondents. } 1070.

284 Respondents file petition for an appeal of this cause to the Supreme Court of the United States, and it is ordered that such appeal be allowed on respondents filing a bond, with security to be approved by the clerk of this court, in the sum of $500.00.

Nov. 26, 1886.

(Signed) DAVID J. BREWER,
*Circuit Judge.*

Said petition for an appeal is in the words and figures following:

In the Circuit Court of the United States in and for the Western Division of the Western District of Missouri. In Equity.

THE CEDAR VALLEY LAND AND CATTLE COMPANY, Limited, Complainant, *vs.* JAMES M. COBURN and WILLIAM N. EWING, Respondents. } No. 1070.

To the Honorable David J. Brewer, judge of the circuit court of the United States in and for the western division of the western district of Missouri:

This day come James M. Coburn and William N. Ewing and pray the court to enter an order of this court allowing an appeal and to allow an appeal of this cause to the Supreme Court of the United States, and to fix the amount of bond and security to be required, and that such bond and security shall be approved by the clerk of this court.

J. M. COBURN AND
WILLIAM N. EWING, *Respondents,*
By KARNES & KRAUTHOFF,
WATERS AND HENRY N. ESS,
*Their Attorneys.*

285 On the 3rd day of December, A. D. 1886, the following entry appears of record, to wit:

CEDAR VALLEY LAND & CATTLE CO. *against* J. M. COBURN *et al.*

The following order was this day filed and ordered to be recorded, to wit:

CEDAR VALLEY LAND & CATTLE CO.,
*against*
J. M. COBURN *et al.*

This day come defendants, by their solicitors, and present to the court their bond for appeal and a citation in the above-entitled cause; whereupon, upon due examination thereof, said bond is by the court approved and said citation signed.

A. KREKEL, *Judge.*

Said bond for appeal is in words and figures as follows:

UNITED STATES OF AMERICA, *sct:*

THE CEDAR VALLEY LAND & CATTLE COMPANY, Limited, Complainant,
*vs.*
JAMES M. COBURN and WILLIAM N. EWING, Respondents.
} In Equity. No. 1070.

Know all men by these presents that we, James M. Coburn and Wm. N. Ewing, as principals, and O. P. Dickinson and L. J. Talbott, as sureties, are held and firmly bound unto the Cedar Valley Land & Cattle Company, Limited, its successors and assigns, in the sum of five hundred dollars; to the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

286 Sealed with our seals and dated this 2nd day of Dec., A. D. 1886.

Upon the express condition, to wit: Whereas the above-named James M. Coburn and William N. Ewing have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the cause above named by the circuit court of the United States for the western division of the western district of Missouri: Now, if the above-named James M. Coburn and William N. Ewing shall prosecute their said appeal to effect and answer all damages and costs if they shall fail to make good their plea, then this obligation to be void; otherwise to remain in full force and virtue.

WM N. EWING. [SEAL.]
JAMES M. COBURN. [SEAL.]
O. P. DICKINSON. [SEAL.]
L. J. TALBOTT. [SEAL.]

The above bond is hereby approved and ordered to be filed and made a part of the record.

A. KREKEL, *Judge.*

287 UNITED STATES OF AMERICA,
*Western Division of the Western District of Missouri,* } *sct:*

I, Henry C. Geisberg, clerk of the circuit court of the United States in and for said division and district, do hereby certify that the foregoing is a full and complete transcript of the pleadings,

proceedings, and final decree in the cause wherein The Cedar Valley Land and Cattle Company, Limited, and George Dixon Fisher are complainants and James M. Coburn and William N. Ewing are respondents, as fully as the same remains on file and of record in my office.

Witness my hand as clerk and the seal of said court.

Done at office, in the city of Kansas, this 18th day of ——, A. D. 1887.

{ Seal of the United States Circuit Court for the Western District of Missouri, Western Division. }

H. C. GEISBERG, *Clerk*,
By WARREN WATSON, *D. C.*

Endorsed on cover: W. Missouri C. C. U. S. No. 141. James M. Coburn and William N. Ewing, appellants, *vs.* The Cedar Valley Land and Cattle Company (Limited). Filed October 4, 1887.